QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From July 1, 1942

Through September 30, 1942

Volume XXVIII

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with Code 1940, Title 55, Section 228, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This report covers all opinions rendered by the Attorney General from July 1, 1942, through September 30, 1942.

The Section of the Code referred to above requires that seven copies of this Quarterly Report be sent to each of the Probate Judges in the State, and the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, the County Superintendent of Education, and Deputy or County Solicitor. Said Code Section also provides a copy of said Report be sent each Circuit Solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State and county officials. If you have any suggestions to make regarding the improvement of the service, we should be glad to receive it. We welcome your criticism.

Very respectfully,

THOMAS S. LAWSON,

Attorney General.

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OPINIONS

July 3, 1942.

Hon. Marvin Copeland, Member,
Tuscaloosa County Board of Equalization,
Tuscaloosa, Alabama.

Taxation—County Board of Equalization—

Duties and powers of County Board of Equalization in reviewing and revising assessments, and hearing protests or objections filed in writing by taxpayer to assessments, discussed generally.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your letter of June 26, 1942, in which you request an official opinion, is as follows:

"On April 29, 1942, a non-resident taxpayer of Tuscaloosa County filed with the Board of Equalization a formal request for the lowering of the tax values on the property owned by him in Tuscaloosa County.

"The Board of Equalization after viewing this property of the taxpayer seems to be of the unanimous opinion that the taxpayer's property is assessed too high and should be reduced. However, the majority of the Board at present feel that under the law the Board has no right to lower the taxes on this property of the taxpayer in view of the fact that his request was not filed prior to the last Monday in April, 1942.

"What I would like to know and I feel sure the Board would like to have your opinion on the following points of law:

"1. Even though the taxpayer was late in filing his protest, would the the Board of Equalization without any agreement with the taxpayer, under the circumstances have the right to set aside his assessment and reduce the taxes of the taxpayer, provided it is done the second Monday in July, 1942?

"2. Would the Board of Equalization with the agreement of taxpayer have the right to set aside and reduce the taxes of the taxpayer, provided it is done before the second Monday in July, 1942?

"3. After the first Monday in April of each year, advise if the Board of Equalization would have the right to set aside the assessment on a taxpayers property, in the event the Board reached the conclusion that the taxpayers assessment is too high or too low, provided the same is done before the second Monday in July of each year?

"4. Could the Board with the consent of the taxpayer, after the first Monday in April of each year, when no protest had been filed by the taxpayer to the assessment, set aside the assessment either for the purpose of increasing his taxes or lowering his taxes, provided the same is done before the second Monday in July of each year?

"If possible, I would like to have an answer to this request before the second Monday in July, 1942."

It is my opinion that your first inquiry must be answered in the negative.

The right of an aggrieved taxpayer to file objections, in writing, to assessed valuations of property as fixed by the County Board of Equalization is expressly provided by Title 51, Section 106, Code of Alabama, 1940, which reads as follows:

§ 106. Tax Assessor to publish notice of valuation of property.—Immediately upon the completion of the work of reviewing and adjusting assessed valuation under the provisions of this chapter, the tax assessor shall give notice by publication once a week for two consecutive weeks in a newspaper published in the county, and if no newspaper is published in the county by posting notices in three public places in each precinct of the county, that the assessed valuations of all property listed for taxation have been fixed as provided by law and that the tax return lists showing thereon such assessed valuations are in his office and open for public inspection, and that the board of equalization will sit at the courthouse of the county, on the first Monday in June to consider such protests as may be filed by any taxpayer as herein provided, and that any taxpayer who is not satisfied with the valuations of his property as fixed and entered on the return lists as required herein, may file objections in writing to such assessed valuations with the secretary of said board, on or before the last Monday in April, and the taxpayer shall set out in such objections filed, the description of each item of property and his reason for making objections to the assessed valuation as placed thereon."

The duty, power, and authority of said Board to hear such objections is provided by Section 107 of Title 51, Code of Alabama 1940, and is as follows:

"§ 107. Meetings to hear objections to valuations; procedure.—For the purpose of hearing objections filed in writing to any assessments or valuations fixed as provided for herein, the board of equalization shall sit at the courthouse in their respective counties on the first Monday in June in each year, from nine a. m. to five p. m., and shall continue as long as may be necessary, provided such sitting shall not be extended beyond the second Monday in July, unless otherwise ordered by the department of revenue, to dispose of all cases where objections to valuations or assessments have been filed in writing by any taxpayer, as provided in this chapter. At such sitting the property owner may appear in person, or by agent or attorney and produce evidence in support of objections, if any, to any assessment or valuation heretofore made, and it shall be the duty of the county board of equalization to examine under

oath any complaining property owner, and to examine any other witnesses under oath as to the fair and reasonable market value of the property of such owner, and if it is found from the evidence that the valuation theretofore placed was not sixty percent of the reasonable market value of such property, whether more or less, then the said valuation or assessment shall be corrected so that it will show sixty percent of a fair and reasonable market value and such corrected amount shall constitute the assessed value of such property. But if it is found from the evidence that the assessed value placed on the property was sixty percent of a fair and reasonable market value thereof, the said value shall stand as the assessed value of said property, unless an appeal is taken therefrom, as provided by this chapter."

The jurisdiction and power conferred by Section 107, supra, upon the County Board of Equalization to hear objections to valuations as fixed by said Board is judicial, and is limited to "hearing objections filed in writing to any assessments or valuations fixed as provided" by law. It is familiar law that "conditions precedent to a statutory review by an officer of the Board must, of course, be complied with. Whatever may be the relief sought, the party applying for it must comply strictly with the provisions of the statute, which confers the right." 3 Cooley on Taxation, 1206; **Daffin, Tax Assessor v. Scotch Lumber Company,** 226 Ala. 33, 145 So. 452. The County Board of Equalization has no authority to sit as a judicial body to consider an objection filed in writing by a taxpayer to an assessment or valuation after the expiration of the time prescribed by Section 106, supra, for the filing of such objection. Section 107, supra, is not operative until the conditions prescribed by Section 106, supra, have been complied with.

The meeting of the Board, provided by Section 107, supra, to be held from the first Monday in June to the second Monday in July is a quasi judicial procedure designed to accord to the objecting taxpayer his constitutional right to be heard and have his day in court. But the County Board of Equalization, "when sitting to hear complaints and objections, is a court of special and limited jurisdiction; and, like other courts when a time is prescribed by statute within which its term shall be held, it is essential to the exercise of its jurisdiction that it act (on objections seasonably filed and in the manner required as provided by Section 106, supra) within the term or time prescribed, else its acts are coram non judice." **Espalla v. Mobile County,** 15 Ala. App. 443, 73 So. 761. This case was on certiorari to the Supreme Court of Alabama (**Ex Parte Mobile County,** 200 Ala. 410, 76 So. 2), and the Supreme Court reversed the judgment on the ground that the Court of County Commissioners was not liable to the members of the County Board of Equalization for services rendered by said Board in special session beyond the terms fixed by statute.

The object of interpretation of a statute is not to improve the statute but to expound it, and the court determines intention of statute only from words in which intention is expressed, applied to the existing facts. **Gibbs v. State,** 29 Ala. App. 113, 192 So. 514.

"There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are man-

datory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished."

Alabama Pine Co. v. Merchants and Farmers Bank of Aliceville, 109 So. 358.

"Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substances are directory, while the provisions which relate to the essence of the thing to be done; that is, to matters of substance, are mandatory." 25 R. C. L. 767, Sec. 14.

The duties prescribed by Section 107, supra, are mandatory. The duties of the Board prescribed by Section 104 of this Title, dealing with reviewing, revising, correcting and fixing valuations, are made ministerial and directory by Section 111 of this Title.

It is my opinion that your second inquiry must also be answered in the negative.

An agreement entered into by and between the County Board of Equalization and the taxpayer to set aside an assessment, and lower the assessment, so as to reduce the taxes of the taxpayer, all after the assessment for the taxable year had been made and approved, and the time for filing objections thereto had expired, would be in derogation of the plain and manifest statutory provisions of law as set forth in Sections 106 and 107, supra. Such action on the part of the Board would be coram non judice and void.

Such action on the part of the Board would be a departure from the plain language of the statute without one iota of justification, and could not find sanction in any court. The Legislature could not have intended such result under a rational, sensible construction. Any other conclusion would invest Boards and officers with power to emasculate the plain and mandatory provisions of the statutes.

It is recognized that: "All particular rules for construing statutes must be regarded as subservient to end of determining legislative intent," (**Middleton v. General Water Works & Electric Corp.**, 25 Ala. App. 455, 149 So. 351) and, "the intention of the Legislature must primarily be determined from the language of the statute itself if it is unambiguous," (**Steber v. State**, 26 Ala. App. 148, 155 So. 706). These are some of the rules of statutory construction that furnish the light to guide us by this instance.

Had the Legislature intended that the County Board of Equalization could suspend the jurisdictional requirements of the statute in order to accomplish the purpose for which the Board was created it would have expressly granted such power in the creating act. Expressio unius est exclusio alterius.

It is my opinion that your third inquiry should be answered in the negative.

The duty, power and authority of the County Board of Equalization to review assessments is provided by Title 51, Section 104, Code of Alabama 1940, and is as follows:

> "§ 104. Meetings to review assessments; majority to govern.—When the asesessor shall have completed the assessment, valuation and equalization work in his county as provided by law, he shall notify each member of the board of equalization and such board shall meet on the second Monday in March and sit at the courthouse of the county from day to day until their duties are completed, which shall not be later than the first Monday in April, and shall review, revise, correct and fix the assessment values made by the tax assessor by raising or lowering the assessment of any person, partnership, corporation or association, except such assessments as have been approved by the department of revenue, as to any or all of the items of his assessment, in such manner as to secure the assessment of property at sixty percent of its fair and reasonable market value. The majority of a board of equalization shall govern in fixing the value for assessment of all property before them for determination."

It is plainly provided by this section that the Board shall meet on the second Monday in March of each year for the purpose of reviewing, revising, correcting and fixing the assessment values made by the assessor by raising or lowering same and shall complete their duties in this respect not later than the first Monday in April of each year.

Since the Board of Equalization is a quasi judicial body, exercising a special and limited jurisdiction, and the statute has prescribed a time "within which its term shall be held, it is essential to the exercise of its jurisdiction that it act within the term of time prescribed, else its acts are coram non judice." **Birmingham Building and Loan Asso. v. State**, 120 Ala. 403, 408, 25 So. 52.

In view of what has been said hereinabove, it becomes unnecessary to answer your fourth inquiry as to whether or not the Board could set aside an assessment with the consent of the taxpayer beyond the term or time prescribed by law for reviewing, revising, correcting and fixing valuations.

There are several opinions of this office (Quarterly Report of the Attorney General, Volume XV, page 136; Quarterly Report of the Attorney General, Volume XX, page 34, and Quarterly Report of the Attorney General, Volume XXV, page 110) which discuss objections filed by a taxpayer to the assessment or valuation of his property. However, none of these opinions deal directly with the questions presented in the instant request.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 3, 1942.

Hon. John C. Curry,
Commissioner of Revenue,
Capitol.

Income Tax—

Time for Making Application for Refund—

1. If the statute of limitations of one year has run against the right to file application for a refund of an erroneous tax paid at the time Code of 1940, Title 51, Section 410, was adopted, then the right to file application is not revived by said code section.

2. If, at the time of the adoption of the Code of 1940, the claimant's right to file application for refund of taxes illegally paid under the one year statute of limitations has not expired, then, in that event, the taxpayer may file his application for refund under Code 1940, Title 51, Section 410, any time within two years from the date of the erroneous or illegal payment of tax.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for official opinion bearing date of April 30, 1942, is as follows:

"An opinion is requested relative to the legal status of a petition for refund of income tax, whether or not such claim may be certified to the Comptroller for payment when the facts pertaining to the Statute of Limitations are as follows:

"An income tax payment covering the taxable year 1937 was paid to this Department on July 31, 1939. Subsequently on March 14, 1941, more than one year from date of payment, a petition for refund was filed by the taxpayer. Under the then existing statute (Section 345.36, Revenue Act of 1935) as interpreted by the Alabama Supreme Court in the case of John C. Curry as Commissioner of Revenue, etc. v. Henry P. Johnston the tax was not refunded for the petition had not been filed within the time prescribed by law.

"Subsequently the Code of 1940 became effective on May 31, 1941, which was less than two years after the date of the payment of the tax in question, and under the provisions of Section 410, Title 51, of said Code the taxpayer had two years from the date of payment within which to file a petition for refund.

"The question now presented is whether or not the claim for refund which at the time of the filing of the original petition was barred by the

one year statute was revived by the enactment of Section 410 of Title 51 of the Code of 1940, which became effective before the expiration of two years from the date of the payment of the tax.

"The claim has been verified and found to be correct in all respects except as to the question of the Statute of Limitations. I would thank you for your formal opinion in this matter."

Prior to the adoption of the Code of 1940, the right to apply for a refund of income taxes wrongfully or erroneously paid was created by the General Revenue Act of 1935. The controlling provisions are to be found in Section 345.36 (page 422) and Section 345.40 (page 424). These sections made no provision in terms how and when the application should be made. The act simply required that application be duly filed with the Tax Commission "according to provisions of the law in that regard."

The Supreme Court in the case of **Curry, Commissioner of Revenue v. Johnston**, 6 So. 2d. 397, in construing these provisions, held that an act of the Legislature of 1931, approved July 17, 1931, applied to and controlled the time for filing the application. This act required that the application must be made within twelve months from the date of the payment of the erroneous tax. General Act, 1931, page 527, Section 2 (page 528). These statutory provisions remained in force until the 1940 Code of Alabama went into effect (May 31, 1941) under the Governor's proclamation of date May 1, 1941.

The case of **Curry, Commissioner of Revenue v. Johnston**, supra, held that unless the application was filed within twelve months from date of the payment of the erroneous tax, the cause or right of recovery was barred. Under the ruling of this Curry Case, it is clear beyond dispute that when the taxpayer in the case under consideration filed his application on May 14, 1941, for a refund of taxes paid July 1, 1939, his cause or right for a refund was barred, that is to say, he had no cause of action or right. The Code of 1940, Title 51, Section 410, provides that applications for refund of such taxes shall be made within two years from the date of the payment of the tax.

Concretely, your question is, Do the codal provisions revive a right to a refund that had already been barred at the time of the adoption of the Code? This subject must be approached in the light of the fundamental rule that a statute of limitations affects the remedy only and does not create or destroy causes of action. **Crawford v. Childers**, 1 Ala. 482; **Townsend v. Jemison**, 50 U. S. 407, 13 L. ed. 194.

In the absence of statutory provision to the contrary, the general rule is that on the adoption of a code of laws of a general or permanent nature which previously existed and were omitted from the codification cease to be law and the law so codified became the law from the the adoption of the code. 59 C. J. 891 (§487) D; **State v. Towerly**, 143 Ala. 48, 49, 39 So. 309.

Statutes of limitations, unless they expressly or by necessary implication provide otherwise, do not operate retrospectively. The future, not the past, is their field of operation. They speak from the time of their enactment barring the rights which afterwards exist capable of enforcement during the period prescribed. **Ivey v. Blum**, 53 Ala. 172.

In a well-considered case, it is held that the rule for the construction of statutes of limitations is not to give them a retrospective operation unless their language imperatively requires such construction and that a statute will not be so construed as to affect a cause of action already barred if such construction can be reasonably avoided. **Bussy v. Bishop**, 169 Ga. 251, 150 S. E. 78, 67 A. L. R. 287, 289-290.

Our Supreme Court has said on the question of limitations of actions that the code provisions apply to causes of action subsisting when the code went into affect. **Martin v. Martin**, 35 Ala. 560; **City of Birmingham v. Doster-Northingham Drug Co.**, 207 Ala. 542, 543, 93 So. 475.

It is a well-settled principle of law that the legislature has power by express provisions to increase the period of time necessary to constitute limitation and to make it applicable to existing causes of action, provided such change is made before the cause of action is extinguished under the preexisting statute of limitations. **Davis and McMillan v. Industrial Accident Commission**, 46 A. L. R. Ann. page 1101; 34 Amer. Juris. 35, Section 20. Applying the principles announced in the foregoing authorities, it is my opinion that where the statute of one year under the cited acts of the Legislature of 1931 had barred the filing of the application for a refund prior to the adoption of the Code of 1940, Title 51, Section 410, the code provisions therein did not revive a right to file application for a refund of taxes paid. I am of the further opinion that if the statute of one year had not run against a claim at the time of the adoption of the code, then the party holding such claim has, under the code provisions, two years from the date of the payment of the illegal or erroneous tax within which to file his application for such tax unlawfully paid.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 3, 1942.

Hon. John D. Petree, Director,
Department of Industrial Relations,
Montgomery, Alabama.

Child Labor — Statutes —

Under Title 26, Section 364, Code of Alabama, 1940, Child Labor badges must be purchased from general funds of Department of Industrial Relations, likewise, moneys accruing from annual accounting must be credited to general fund of Department of Industrial Relations.

Opinion by Assistant Attorney General Flowers.

Dear Sir:

Your request for official opinion bearing date of June 23, 1942, is as follows:

"The Division of Labor of the Department of Industrial Relations is responsible for the administration of the laws of Alabama relating to child labor.

"It is provided in the Code of Alabama 1940, Title 26, Section 364, as follows:

" 'Renewal of badge; badge replaced if lost.—All badges shall be renewed annually between October 1 and December 31, and shall not be transferable, and the form, design or color, shall be changed annually. A deposit of not more than fifty cents may be required by the person issuing the badge, to be returned upon the surrender of the same; and if lost, the badge may be replaced upon the payment of twenty-five cents. All badges shall be provided by the department of industrial relations and paid for out of any moneys in the treasury not otherwise appropriated, and shall be distributed by said authority on or before October 1 of each year. A record of all moneys received or deposits for badges shall be kept by the officer empowered to issue such badges. On December 31 of each year, the account shall be closed and all moneys accruing or which have theretofore accrued from deposits made for badges lost or badges not returned shall be transmitted by said superintendent, principal or his designated agent to the department of industrial relations to be handled as other general funds of the said department are handled, and a report of said moneys so deposited shall be made by said superintendent, principal or his designated agent to the department of industrial relation.'

"It will be noted that among other things this section provides:

"'All badges shall be provided by the department of industrial relations and paid for out of **any moneys in the treasury not otherwise appropriated,**' and

"'A record of all moneys received or deposits for badges shall be kept by the officer empowered to issue such badges. On December 31 of each year, the account shall be closed and all moneys accruing or which have theretofore accrued from deposits made for badges lost or badges not returned shall be transmitted * * * to the department of industrial relations to be handled as other general funds of the said department are handled. * * * '

"When requisitions are made for badges the question arises as to whether the amount of funds to be used for the purchase of badges should be charged to the General Fund Account of the Department of Industrial Relations, or whether such funds should be paid out of the general funds of the State which are in the treasury and not otherwise appropriated.

"A further question which arises in handling the funds involved in the issuance of badges is, when on December 31 of each year the badge account is closed and all moneys accruing from deposits made for badges lost or badges not returned are transmitted to the Department of Industrial Relations, should such moneys be credited to the General Fund Account, Department of Industrial Relations, maintained in the State Treasury, or should they be entered in the general funds of the state.

"It will be appreciated if you will give us your opinion regarding this matter as at this time a requisition for badges is being withheld until the proper manner of handling such transaction can be determined."

When the accepted rules for the construction of a statute are applied to this section of the Code, the chances of failing to ascertain the intention of the Legislature are remote. In construing a statute, the court must look to the whole act to reach the intention of the Legislature. **State ex rel Ellis v. Griggs**, 227 Ala. 681, 151 So. 850. A statute must be construed as a whole and the intention of the whole will control the interpretation of the parts. **Patterson v. State**, 16 Ala. App. 483, 79 So. 157. Each section, paragraph, and clause of an act must be construed as standing in pari materia and must be construed as a whole when they have the same general purpose. **Wages v. State**, 225 Ala. 2, 141 So. 707.

Applying the aforementioned principles to the instant statute, it willl be noted that it is specifically provided that, "all badges shall be provided by the Department of Industrial Relations and paid out of any moneys in the treasury * * *." The statute further provides:

"A record of all moneys received, or deposits for badges shall be kept * * * and all moneys accruing or which have heretofore accrued from deposits made for badges lost or badges not returned shall be made by said superintendent, principal or his designated agent to the Depart-

ment of Industrial Relations to be handled as other general funds of said department are handled. * * * And a report shall be made * * * to the Department of Industrial Relations."

In my opinion and I so hold that the badges thus provided for must be paid for from the general funds which are in the treasury to the credit of the Department of Industrial Relations and which have not been otherwise appropriated.

I am of the further opinion that after December 31 of each year when the "badge account" is closed, the moneys accruing therefrom should be credited to the general fund account, Department of Industrial Relations, from whence the funds which provided the initial purchase price of the badges originated.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 3, 1942.

Hon. Howard Kirby,
Clerk of Circuit Court,
Etowah County,
Gadsden, Alabama.

Circuit Clerks — Fees — Nolle Prosequi —

1. A circuit clerk is entitled to a fee of twenty-five cents, as provided for in Code 1940, Title 11, Section 89, for entering judgment as to a defendant in a case which a nolle proesqui is entered.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your request for official opinion bearing date of March 21, 1942, is as follows:

"Please render to me your opinion on the following matter.

"Section 3739 of the 1923 Code stated that the Clerk of the Circuit Court is entitled to a fee of twenty-five (25c) cents for entering judgment **against** each defendant in criminal cases.

"Sometime ago your office ruled that Clerks would not be entitled to charge this fee in claims against the Fine and Forfeiture Fund in

cases where a Nolle Prosequi was entered, it being stated in said ruling that said fee could not be allowed because in such cases there is not a judgment against the defendant.

"Concerning this same fee I have noted that the code of 1940, Section 89, Article 6 of Title 11, reads as follows: Entering judgment **as to** each defendant twenty-five (25c) cents.

"Since the 1940 code has made a change in the wording regarding said fee wouldn't I as Clerk be entitled to this fee on claim against the Fine and Forfeiture Fund in cases where a Nolle Prosequi is entered, since a Nolle Prosequi is a judgment as to and in favor of the defendant, although not a judgment against the defendant?"

As pointed out in your letter, Section 3739, Code of Alabama, 1923 which fixed the fees of clerks of the Circuit Court in criminal cases contained the following proviso:

"Entering judgment **against each defendant** ..... 25c" (Emphasis supplied).

This office on several occasions considered the question of whether or not a clerk was entitled to the fee, supra, in a case in which a nolle prosequi was entered and in each instance concluded that a clerk was not entitled to the fee under such circumstances. This on the theory that when a nolle prosequi is entered in a case **there is no judgment entered against the defendant.** Biennial Report, 1934-36, page 29, and Quarterly Report of Attorney General, Volume XXI, page 100.

However, when Section 3739 was brought forward in the 1940 Code (Title 11, Section 89), it contained the following proviso, in lieu of the above quoted proviso from Section 3739:

"Entering judgment **as to each defendant** ..... **25c"** (Emphasis supplied).

It will be noted that the proviso, as it appears in the Code 1940, supra, provides that the clerk is entitled to the fee of 25c for entering judgment **as to each defendant**, whereas the proviso, as it appeared in the Cdoe of 1923, supra, was for entering judgment **against each defendant.** The question is thus presented, in view of the change hereinabove noted, as to whether a circuit clerk is entitled to the 25c fee in criminal cases in which a nolle prosequi is entered. I think so.

The effect of a nolle prosequi being entered in a case is to put an end to the then prosecution. **Walker, et als v. State**, 61 Ala. 30. Such an order of a court when recorded by the clerk in the judgment entry shows a dis-

charge of the defendant and is a judgment of dismissal. **Snead v. Jones**, 169 Ala. 143, 53 So. 188. This being true, it is my opinion that the clerk is entitled to the fee provided for in Code 1940, Title 11, Section 89, supra, when a nolle prosequi is ordered by the court and the clerk enters a judgment of dismissal of the then prosecution as to the defendant involved.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 3, 1942.

Hon. Roy O. Hill,
Clerk, Circuit Court,
Houston County,
Dothan, Alabama

Costs and Fees — Misdemeanors — Pleas of Guilty —

In pleas of guilty for violation of regulation legally adopted and promulgated under Section 72 of Title 36 of the Code, from judgment on which pleas no appeal is taken, fees for trial, solicitors' fees, and entering judgment, are not collectible. Section 81, Title 11, Code of 1940.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Your request for official opinion bearing date of June 12, 1942, is as follows:

"Section 81 of Title 11 provides for certain fees not being collected in all misdemeanor cases for violation of any of the provisions of titles 23 and 36 of the Code of Alabama of 1940.

"The new 40 mile speed limit is a promulgated rule of the Highway Department, pursuant to provision, I presume, of Section 72, Title 36.

"Please advise me if fees for trial, solicitor's fees or entering judgment in case of an automobile speeding—i. e. violation of the 40-mile promulgated rule—should be collected.

"As we have a good many of these cases now, I shall thank you for a prompt reply."

In my opinion, in pleas of guilty to prosecutions under the regulations promulgated by the Director of Public Safety and approved by the Governor, under the provisions of Section 72 of Title 36 of the Code of 1940, as to which Section 69 of Title 36 provides the penalty, from the judgment on which pleas no appeal is taken, no fee should be taxed or collected for trial, solicitor's fee, or entering judgment.

Section 72 of Title 36 provides:

"§72. Rules and regulations for enforcement of law.—The director of public safety, with the approval of the governor, shall establish and promulgate reasonable rules and regulations not in conflict with the laws of this state concerning operation of motor vehicles and concerning the enforcement of the provisions of this article."

Section 69 thereof, insofar as here pertinent, provides:

"§69. Penalty for violation in general; disposition of funds.— * * * Any person who violates any provision of this article for which no fixed punishment is prescribed or **who violates any rules or regulation promulgated as herein authorized**, shall be guilty of a misdemeanor and, upon conviction thereof before a justice of the peace or court of like jurisdiction shall be punished by a fine of not more than one hundred dollars. * * * " (Emphasis supplied)

Section 81 of Title 11 of the Code of 1940 provides:

"§81. Fees in misdemeanor cases where defendant pleads guilty.—In all misdemeanor cases for violation of any of the provisions of titles 23 and 36 cognizable in justice of the peace courts, courts created in lieu of justice of the peace courts, county courts, inferior courts, law and equity courts, or courts of like jurisdiction, where the defendant pleads guilty and no appeal is taken, no fee shall be taxed or collected in said courts for trial, solicitor's fees, or entering judgment in such cases."

So that, a violation of the regulation limiting speeds to forty miles per hour, by virtue of the legal adoption and promulgation of said regulation, becomes a "misdemeanor case for violation of any of the provisions of Title * * * 36, cognizable in justice of the peace courts, courts created in lieu of justice of the peace courts, county courts, inferior courts, law and equity courts, or courts of like jurisdiction," within the meaning of Section 81, supra; and, in case of pleas of guilty to prosecutions therefor, the provisions of Section 81, supra, govern.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 6, 1942.

Hon. John D. Petree, Director,
Department of Industrial Relations,
Montgomery, Alabama.

Clerks of Circuit Courts — Commissions — Remit to State —

Clerks of Circuit Court are not entitled to a commission on collections made by them growing out of judgments secured by the Department of Industrial Relations covering delinquent Unemployment Compensation contributions to the Unemployment Compensation Agency, upon remitting such funds to the Director of the Department of Industrial Relations.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of June 10, 1942, is as follows:

"The Department of Industrial Relations, as you know, administers this State's Unemployment Compensation Law, which is found in Title 26, Chapter 4, 1940 Code of Alabama. The Unemployment Compensation Agency collects contributions or taxes from covered employers and utilizes such funds for the payment of unemployment compensation benefits to eligible claimants.

"Sections 197 and 199, Title 26, 1940 Code of Alabama, in dealing with these collections provides in part as follows:

" '197. Funds.—There shall be a special fund, separate and apart from all public monies or funds of this state, and unemployment compensation fund, which shall be administered by the Director exclusively for the purposes of this Chapter without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of: A. All contributions paid into or collected pursuant under this chapter, together with all interest and penalties earned or collected pursuant to this chapter. B. Interest earned upon any monies in the fund. C. Any property or securities acquired through the use of monies belonging to the fund; and, D. All earnings of such property or securities.'

" '199. Withdrawals.—Money shall be requisitioned from the state's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the Director.'

"In dealing with fees and commissions of Circuit Clerks, in connection with the collection of monies belonging to the State of Alabama, Title 11, Section 22, 1940 Code of Alabama, provides that:

" 'The Clerks and Registers of the several Circuit Courts of the State of Alabama shall receive five percentum of any sum or sums collected by such Clerk or Register for the State of Alabama, as compensation for the collection and remittance of the same, the said percentage to be deducted by such Clerk or Register making the collection from such sum or sums collected.'

"We respectfully request whether it is your opinion that this Section 22, giving the Circuit Clerks the right to deduct five percent of any sums collected by them for the State of Alabama is applicable to money paid Circuit Clerks in payment of judgments secured by the Department of Industrial Relations covering delinquent unemployment compensation contributions due the Unemployment Compensation Agency, in view of the aforementioned Sections 197 and 199, Title 26, 1940 Code of Alabama."

Before proceeding to a categorical answer of your question, I deem it advisable to show the method of handling the funds here considered.

My information is that when these funds are collected by a clerk or register the same are remitted to the Director of the Department of Industrial Relations. These funds are then placed on deposit in some bank in the State of Alabama to the credit of the Unemployment Compensation Agency, then such funds are remitted to the United States Treasury in Washington. When the Unemployment Compensation Agency has an occasion to pay any claim out of this fund, they requisition the Treasury Department in Washington, and the Treasury Department, in turn, remits to some corresponding bank in the State of Alabama, and then such funds are disbursed to the persons entitled thereto, that is to say, those people entitled to compensation under the Unemployment Compensation Law.

It is my further information that no report of these funds is made to the State Treasurer, and they never pass through the Treasury Department of the State of Alabama, but are dealt with as hereinabove pointed out.

It is to be noted from Section 197, Title 26, Code of 1940, that the special fund thereby created shall be separate and apart from all public monies or other funds of this State, and shall be used by the Director exclusively for the purpose of this Chapter.

The fee or commission allowed to clerks and registers by Title 11, Section 22, Code of 1940, for collecting and remitting funds for the State of Alabama, in my opinion, deals with funds which the State of Alabama in some way will be either the direct or indirect beneficiary. This section allows to the clerks and registers a fee or commission for collections for the State of Alabama. As has been hereinabove pointed out, the collections of the funds here considered are not funds collected for the State of Alabama, but on the other hand, they are funds collected for the benefit of those persons entitled to benefits under the Unemployment Compensation Law.

Premises considered, it is my opinion that the several clerks and registers of the several counties of the State are not entitled to the five percent commission allowed them for collecting and remitting the fund here considered, as provided by Section 22, supra. Cf. Biennial Report, Attorney General, 1928-30, page 909; Quarterly Report, Attorney General, Vol. XI, page 103; Quarterly Report, Attorney General, Vol. XIV, page 316.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 6, 1942.

Hon. Bradley G. Brown,
License Inspector,
Jefferson County,
Birmingham, Alabama.

License Tax—Accountants—

1. Code 1940, Title 51, Section 453, requires a license of each professional actuary, auditor or public accountant who engages in that kind of professional work.

2. Where a firm or corporation is engaged in the business of serving the public as public accountants, each professional accountant employed by it who engages in such accounting business for the firm or corporation is liable for the privilege tax provided for in Code 1940, Title 51, Section 453.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for official opinion bearing date of June 12, 1942, is as follows:

"Here in Jefferson County we have a firm known as Johnson & Smith, Certified Public Accountants. This firm employs, on a salary, several public accountants. The firm instructs these accountants how to do the work, when to work and where to work. The accountant has no contractual relations with the clients of the firm, nor they with them. He does not hold himself out to be a public accountant; neither does he undertake to render any service to the public as such. He receives no remuneration from the clients of the firm. He is not a member of the firm and neither he nor the firm ever represent that he is. He never

represents the firm in relation with the client concerning matters arising during the course of the audit, such matters being always handled by a member of the firm. From the nature of public accounting, such employees must necessarily perform the larger part of accounting work in the office of the firm's clients, where the records are kept, rather than in the office of the firm.

"The License Inspector's office of Jefferson County having cited these employees, has taken the position that they are liable for privilege license under Section No. 453, Title 51 of the Code of 1940. The above firm differs; they being of the opinion that these persons are not practicing their profession for the public but are merely performing work as clerks for the firm.

"We have had the same question to arise under Section No. 459, Architects, and Section No. 460, Attorneys. Your opinion as to the liability of these employees for privilege license would be appreciated."

It is my opinion that the persons employed in the manner detailed in your letter are liable for license required by Section 453, Title 51, Code of 1940.

Your question requires an examination and consideration of Section 453, Title 51, of the 1940 Code of Alabama. This section provides that:

"Each professional actuary, auditor, or public accountant, twenty-five dollars to the state, but no license shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one person above named is engaged, each person so engaged shall pay a license of twenty-five dollars."

This section harkens back to Section 450 of the same title where every person, firm, company, corporation, association, receiver or trustee engaged in any business, occupation, vocation, calling or profession is required to pay a license. This quoted section is one of a large body of laws levying a license tax on businesses, vocations and occupations and the proper construction of it requires a consideration of this body of laws to determine the purposes of this general enactment of license laws.

I have been unable to find any decision of the courts of this state construing Section 453 under consideration on the point involved in this case, nor have I found any statute such as our statute in any other state. The nearest approach to said section is to be found in the statutes of Virginia, the material provisions of which are as follows:

"Any person or firm who shall for compensation engage in the business of civil engineer *** shall pay a license tax *** for the privilege of conducting such business."

The Virginia Supreme Court of Appeals construed this section in the case of **Derrick v. Commonwealth,** 122 Va. 906, 95 S. E. 392, L. R. A. 1918D 284.

The court in this case said that it was one where an engineer was engaged in his profession as a civil engineer, not in the general sense that he was open to employment by the public. He was in the exclusive employment of a railroad company. The whole of his time and services were engaged and paid for by his employer. The court, in a lengthy opinion, held that he was not subject to the license tax provided for by this Virginia statute. The court laid great stress on the expression of the statute "engaged in the business of civil engineer" and held that this language applied to such engineers as engaged in the business of serving the general public. It must be noted from the statement of facts here in this case that the railroad company, the employer of the engineer, was not engaged in civil engineering business. The annotation of this case in L. R. A. 1918D 284, 287, makes the following pertinent statement:

> "Research has disclosed no case directly in point with Derrick v. Com. ante, 284. It will be observed that in that case the employee was rendering services to his employer exclusively, **and not to customers of the employer.** In other words, the employer only was concerned directly with the nature or character of the service rendered. The question whether such an employee must take out a license seems to be different from that **where the employee, although performing services for the employer's financial benefit, serves the latter's customers, who are therefore directly interested in the nature or character of the service performed.** In the latter case, apparently the purpose of many license statutes would only be fulfilled by requiring the employee to procure a license, *** ." (Emphasis supplied.)

The annotation then proceeds to cite cases, somewhat analogous cases, to support this statement. A comparison of the Virginia statute with our Section 453 will disclose that our statute is different and much broader and the facts in the Virginia case was that of an engineer not working for an engineering company but for a railroad company. Our statute, as we have quoted, uses the language "each professional actuary, auditor, or public accountant" shall pay, etc. The person here dealt with must be a professional actuary, auditor or public accountant. This word "professional" has a well-known meaning. It pertains to a calling or occupation requiring a superior education or qualification as distinguished from an amateur. It refers to one who makes his living by an occupation, one who engages in anything professional. Actuary is one who is skilled in accounting. An accountant is one skilled in keeping, examining and adjusting of accounts.

Our statute (Section 453) requires such a professional to pay a license tax. This provision is further supported by the provision of the section that "if such business is conducted as a firm or as a corporation in which more than one **person above named** is engaged, **each person so engaged** shall pay." The expression "one person above named" refers to persons that are professionals named in the first part of the section—skilled in accounting and engaged in such work. The word "engaged," as used in the latter part of this section, means the employing of the attention and efforts of such professionals.

It is entirely clear to my mind, and I so hold, that the statute (Section 453) applies to persons employed in the manner set out in your letter. The facts stated in your letter show that the firm referred to is engaged in the business of public accountants and have employed accountants to assist the firm in serving the general public in such business. Each person so employed is doing the work of the firm—serving the public. What difference is there in serving the public individually and serving it through the firm or serving the public indirectly rather than directly? The firm procures the business and the professional accountants do the work and, in so doing, they serve the public.

If the contention of the firm named in your letter is sound, then two professional accountants can enter into a co-partnership and employ all the other accountants in the State of Alabama to do the work and so all the business of accounting in the State could be done by this firm by paying a license tax for the firm and thereby relieve all professional accountants doing the work for it free from license taxation. Certainly, the law-making body intended no such absurd results.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 6, 1942.

Hon. John C. Curry,
Commissioner of Revenue,
Capitol.

Sheriff's fees—

Sheriff entitled to full commission on amount collected by him under writ of execution issued by the Department of Revenue, pursuant to provisions of Section 770, Title 51, Code of Alabama, 1940.

Sheriff's fees—

In collection made under a writ of execution, issued by Department of Revenue, the sheriff is entitled to his statutory commission which must be collected as costs from person against whom the writ is directed.

Opinion by Assistant Attorney General Flowers.

Dear Sir:

Your request for official opinion bearing date of June 8, 1942, is as follows:

"Writs of execution issued by the Department of Revenue against a taxpayer under the provisions of Section 770 of Alabama Sales Tax Act (Code of Alabama 1940, Title 51, Chapter 20, Article 10), were executed by the Sheriff of Autauga County, in connection with which a question is raised as to whether the Sheriff's commission should be collected by him from the taxpayer as a part of the costs or may be deducted from the amount due the State for which the execution is issued. Copy of the form of execution used is herewith submitted.

"Please advise whether, in your opinion, in view of Section 131, subdivision (q), Title 51; Section 34, Title 11, and Section 770, Title 51, Code of Alabama of 1940, the Sheriff's commission for his services should be collected from the taxpayer as a part of the costs, or may be deducted by the Sheriff from the amount due the State and for which execution was issued."

This question involves a construction of several Code Sections relating to fees and sheriff's fees. Section 1, Title 11, Code of Alabama, 1940, provides as follows:

"The law of fees and costs must be held to be penal and no fee must be demanded or received except in cases expressly authorized by law . . . "

Section 18, same title, provides:

"Clerks, sheriffs, and other officers, in this title named, are entitled to receive for the services therein mentioned the fees to such services respectively annexed, and no more; **to be taxed, paid, and collected in the manner directed by the provisions of this Code."** (Emphasis supplied).

Section 34, same title, provides:

"Sheriffs are entitled to the following fees for the following services: Collecting money under execution: for the first two hundred dollars 5%; for collecting all sums over two hundred dollars, up to and including five hundred dollars 4%; and for collecting all sums in excess of five hundred dollars 3%; **but no commission shall be collected on costs."** (Emphasis Supplied).

Section 65, same title, provides:

"The successful party in all civil actions is entitled to full costs for which judgment must be rendered, unless in cases otherwise directed by law, or by the judgment of the court. *** "

In view of the foregoing statutes it is clear that the fees allowed a sheriff for his acts in connection with levying executions should become a part of the costs; that the cost should be taxed against the unsuccessful party to the suit, unless otherwise directed; and that, under Section 34, supra, the commission allowed a sheriff for collecting money under a writ of execution is a "fee" within the meaning of the statute.

A previous opinion of this office, Vol. XXIII, Quarterly Reports of Attorney General, page 250, holds that the sheriff is entitled to full commissions upon the amount collected by him under a writ of execution upon a money judgment.

Section 131, Title 51, Code of Alabama, 1940, provides:

"§ 131. Powers and duties of department.—It shall be the duty of the department of revenue, and it shall have the power and authority, in addition to the authority now in it vested by law. *** (q) To issue executions and writs of garnishment directed to any sheriff of Alabama, on any final assessment or judgment made or rendered by it, and upon such executions the sheriff shall proceed as in cases issued out of the circuit court and shall make return thereof to the department of revenue within sixty days after the receipt thereof."

Section 770, Title 51, provides:

"§770. **Execution, levy and sale for taxes.**—If any final assessment of taxes herein levied be not paid within thirty days after such assessment becomes final if no appeal has been taken, in cases where an appeal is authorized, the department shall issue an execution therefor directed to any sheriff of the State of Alabama commanding him to levy upon and sell the real and personal property of the person against whom such execution is directed, found in his county, together with all penalties assessed. *** The sheriff thereupon shall levy upon any property of the taxpayer with like effect and in the manner prescribed by law in respect to execution issued upon judgments of the circuit court or court of like jurisdiction, and the remedies of attachment and garnishment shall apply fully to such execution, and **the officer shall be entitled to the same fees for his services as now allowed by law for like services to be collected in the same manner as now provided by law for like services.** *** " (Emphasis Supplied).

In the case of **Campbell v. State (Ala.)**, 5 So. (2d.), 466, it was held that since the sales tax act authorizes execution to issue when certain conditions exist, their existence has the full force and effect of a "judgment."

Pursuant to the foregoing authorities, it is the opinion of the Attorney General that the Department of Revenue may issue writs of execution directed to any sheriff in the State of Alabama, and that the sheriff's fees in connection with the execution must be collected as additional costs from the party against whom the writ is directed. If there is merely a partial collection of the amount due under the execution the sheriff is entitled to his fee on the amount collected, the amount of the collection less the sheriff's commission to be credited against the amount of the judgment or assessment.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 6, 1942.

Hon. Sim L. Howell, Chairman,
Board of Revenue and Control,
Decatur, Alabama.

Hon. Phil M. Orr, Chairman,
Board of Equalization,
Decatur, Alabama.

Taxation—Exemption—Code 1940, Title 51, Section 2, Subdivision 1—

Wheat is a "raw material" within the meaning of the said term as it appears in Subdivision 1 of Section 2, Title 51, Code 1940.

The exemption granted by Subdivision 1, supra, applies to all raw material, stocked at any plant or furnace for manufacturing purposes, which was produced during the current calendar year in which the exemption is claimed.

The mingling and mixing of raw material, some of which is subject to taxation and some not, renders the entire stock or mass subject to taxation unless claimant can identify, with reasonable accuracy, the portion sought to be exempted.

Opinion by Assistant Attorney General Russell.

Dear Sirs:

Your request for an official opinion, bearing date of June 11, 1942, is as follows:

"The Board of Equalization of Morgan County and the Board of Revenue and Control are in doubt as to the construction of an exemption in the Revenue Code relative to ad-valorem taxes and desire your construction at the earliest possible time.

"There are certain local corporations engaged in business which have on hand raw material for manufacturing purposes which they do not assess. An example may be given by referring to one concern which has wheat to be processed into flour which is grown in the middle west and shipped into this County periodically. The wheat is grown possibly some during the calendar year in which the assessment must be made and some is taken out of the warehouses, having been grown during preceding years.

"We are referred to Sub-Division L of Section 2, Title 51 of the 1940 Code for the exemption. However, since the raw material which is stocked at the plant is not grown or produced during the current calendar year or at least a portion of it is not so grown or produced, it seems to us that the exemption does not apply.

"Will you please give us the benefit of your views and if the part which is not produced during the current calendar year is taxable and unable to be segregated, your further opinion as to whether the whole mass is to be rendered taxable."

At the outset, I deem it advisable to state that, in my opinion, wheat is a "raw material" within the meaning of the said term, as it appears in the exempting statute (Code 1940, Title 51, Section 2, Subdivision 1), which is hereinafter set out.

In answering your specific inquiry, attention is directed to subdivision 1 of the 1940 Code, supra, which provides as follows:

"§2. Persons and property.—The following property and persons shall be exempt from ad valorem taxation and none other: *** (1) All raw material, including coke, produced during the current calendar year, when stocked at any plant or furnace, for manufacturing purposes in Alabama. *** "

Admittedly the exemption granted by subdivision 1, supra, applies only to raw material which is produced during the current calendar year in which the exemption is claimed. In other words, any raw material which is stocked at any plant or furnace, for manufacturing purposes, and which was not produced during the current calendar year in which the exemption is claimed, is not entitled to such exemption.

The question is then presented as to whether or not a whole mass of raw material which is stocked at any plant or furnace, for manufacturing purposes, is rendered taxable because a portion thereof, which cannot be segregated, was not produced during the calendar year in which the exemption is claimed.

I cannot find where our appellate courts have passed upon the question presented, but they have laid down and established some well-defined principles of law in cases bearing a striking analogy to the one herein being considered. It has been repeatedly held that exemptions from taxation must be strictly construed in favor of the taxing power. (**Henry v. McCormach Bros. Motor Car Company,** 232 Ala. 196, 167 So. 256; **Holt v. Long,** 234 Ala. 369, 174 So. 759); that provisions for exemption for county levy are subject to the same rule of strict construction as exemption from State levy (**Henry v. McCormach Bros. Motor Car Company,** supra); and that a person claiming exemption from taxation has the burden of proving his right thereto (**Bowman v. State Tax Commission,** 235 Ala. 190, 178 So. 216; **Title Guaranty Loan and Trust Company v. Hamilton,** 238 Ala. 602, 193 So. 107).

In view of the presumption in favor of the right of the State to claim the tax and the burden resting on the claimant to establish his right to an exemption, it is my conclusion that a lien attaches for the collection of the tax against the entire stock of wheat unless the claimant can identify, with

reasonable accuracy, the wheat sought to be exempted. This upon the rationale of **Leader v. Romano, 208** Ala. 635, 95 So. 7, holding that the commingling of property, some of which is subject to lien and some exempt, renders the entire stock or mass of goods or property subject to the enforcement of the lien.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 6, 1942.

Hon. D. M. Weakley, Superintendent,
Alabama Boys Industrial School,
Birmingham, Alabama.

Alabama Boys Industrial School—Appropriations—

A part of the $10,000 appropriation to the Alabama Boys Industrial School for erection of buildings and to purchase or complete the purchase of lands in the General Appropriation Act of 1939 (General Acts 1939, page 417) may be used for building entrance gates on the property and also for having a topographical survey made of the grounds in front of the building.

Opinion by Assistant Attorney General Mooneyham.

Dear Sir:

I have your request for official opinion bearing date of April 25, 1942, which is as follows:

"The last Legislature made an appropriation to the Alabama Boys Industrial School of Forty Thousand ($40,000.00) Dollars for the erection of buildings, and to purchase or to complete the purchase of lands.

"Please advise me if in your opinion any portion of this money can be used for building entrance gates on the property of the School."

Immediately after receiving this request and before an opinion could be prepared, I received another request for official opinion bearing date of April 28, 1942, which reads as follows:

"It has been necessary for us to have a topographical survey made of the area in front of the dormitory we are now building. We need this in order to properly drain the campus in front of this building, and to determine the elevation of walks, lawns, and water supply lines.

"Please advise me if the cost of making this survey can be paid out of the special appropriation made to the Alabama Boys Industrial School at the last Legislature 'for the erection of buildings, and to purchase or to complete the purchase of lands.'"

Both of your requests are closely related, in that you desire to know if certain expenditures may be made from the 1939 legislative appropriation to the Alabama Boys Industrial School for the erection of buildings and to purchase or complete the purchase of lands. This being true, I will, for the sake of convenience, answer both of your inquiries at the same time. The appropriation to which you refer is made by Subdivision 5 of Subsection (X) of Section 1 of the General Appropriation Act of 1939 (Act No. 247, S. 239, approved August 24, 1939, General Acts 1939, page 417) which reads as follows:

"5. Alabama Boys Industrial School: For the maintenance, support, insurance, and upkeep of the Alabama Boys Industrial School, an annual amount to be drawn quarterly in advance by the Treasurer of the Board of the Alabama Boys Industrial School, and to be disbursed as directed by said Board $108,883.89. Any balance from this annual appropriation of $108,883.89 at the end of any fiscal year shall remain in the hands of the Treasurer of said Board and shall not revert to the State Treasurer. **For erections of buildings and to purchase or complete the purchase of lands $10,000.00,** $118,883.89." (Emphasis supplied.)

Under date of November 30, 1939, (Quarterly Report, Attorney General, Vol. XVII, page 225) I advised you officially that no part of the $10,000 appropriation could be used for making repairs to buildings then belonging to the school, and that it was definitely clear from the language used that said fund should be used only for the erection of buildings and to purchase or complete the purchase of lands.

It is clear that only two types of expenditures may be made from this appropriation, namely, the erection of buildings and the purchase of lands. It is likewise obvious that the expenditures, about which you inquire, could not be classified as being "the purchase of lands." Therefore, it is necessary to determine if such expenditures could be classified as being a part of the "erection of buildings."

To my mind the word "building" is a comprehensive term, and, in its broadest sense, would include any and everything necessary to make a structure suitable for the purposes for which it was being constructed. In Words and Phrases, Permanent Edition, Volume 5, page 870, will be found the following:

"The word 'building,' in its legal sense, is ambiguous, and is susceptible of being construed, without violence, as including many different kinds of structures and edifices erected by man. Great Eastern Casualty Co. v. Blackwelder, 94 S. E. 843, 21 Ga. App. 586."

Also on page 876 of the same volume will be found the following expression which holds that a fence is a building:

"Anything erected by art, and fixed upon or in the soil, composed of different pieces connected together, and designed for permanent use in the position in which it is so fixed, is a 'building.' Thus, a pole fixed in the earth is not a 'building,' but a fence or wall is. *** Kreutgen v. General Outdoor Advertising Co., 6 N. E. 2nd 469, 288 Ill. App. 619."

In view of the foregoing and, also, in consideration of the uses and purposes for which the buildings of the Alabama Boys Industrial School are being constructed, I am of the opinion that both of your inquiries may be answered affirmatively.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 7, 1942.

Hon. W. G. Pruett,
State Highway Director,
Capitol.

Highway Department—Injured Employees—

An employee of the Highway Department receiving compensation checks from an insurance company for permanent injury sustained while in the service may assign these checks to the State Highway Department in consideration that his name be continued on the pay roll and that he continue to receive his regular wages or salary.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your letter of March 31, 1942, in which you request an official opinion, is as follows:

"On September 15, 1939, J. T. Parker, a mechanic assigned to our Kilby shops, was seriously injured in line of duty. Dr. George Blue of Montgomery, surgeon for the Insurance Company, has diagnosed the case as 75% permanent disability of right leg. Employee was absent from his duties from September 15, 1939, until January 22, 1941.

"Under Title 26, Section 279, Paragraph (C), Permanent Partial Disability, of Workmen's Compensation Act, employee would be entitled to 131¼ weeks' pay at $18.00 per week.

"The Insurance Company has issued its checks in $18.00 weekly payments for this period. They have also paid doctors' and hospital bills in an amount exceeding $400.00, although the law only required them to pay $200.00.

"As this employee has been in the employ of the Department 11½ years at the time of accident and was a faithful and valuable employee, when the Personnel Board began to operate, we handled with that Department for special leave of absence under the rules of that Department, which provided, at that time, that such leave first be approved by the State Board of Adjustment. The State Board of Adjustment approved special leave for this employee November 23, 1939, which order contained the following provision:

> " 'That all compensation checks received during disability be endorsed by J. T. Parker to the State Highway Department except any sums received toward hospitalization and medical expense incurred on account of this accident.'

"The Highway Department did carry employee on payroll and employee has endorsed compensation checks to the State.

"It has recently been brought to the attention of this Department that the State was probably in error in requiring an employee to endorse a compensation check to the State in lieu of having his salary paid, when such compensation covered a permanent disability, such as this is. It has been pointed out to us that had employee suffered a temporary injury, it would have been proper for employee to have endorsed check to Highway Department for loss of time, he being carried on payroll, but in permanent disabilities caused while working for an employer, the compensation is paid for the permanent disability to the employee and not for the loss of his time to his employer. In this connection your attention is directed to the case of Agricola Furnace Co. vs. Smith 195 Southern 743, 239 Ala. 488.

"As the Insurance Company has just recently completed paying the employee the 131¼ weeks' compensation, which compensation has been endorsed to the State Highway Department, and we have asked employee to sign final release, this employee has requested us to return to him compensation he has endorsed to this Department, 131¼ weeks at $18.00 per week, for the reasons as above set out.

"Will you please give me your opinion as to whether or not it will be proper for me to reimburse this employee in the amount of compensation he has endorsed to this Department."

Under the law as declared by our Supreme Court, the weekly payments of $18 for which the insurance company issued its checks to Mr. Parker were his property and were in payment for the permanent disability of his right leg and not in lieu of his lost time. The Highway Department had no interest in or control over it. **Agricola Furnace Co. v. Smith,** 239 Ala. 488, 195 So. 743.

From the record in this case Mr. Parker was sui juris and had a right to dispose of these weekly checks in any legal manner he saw proper. 12 Amer. Juris. 515, Section 18; 17 C. J. S. 357, Section 27; 17 C. J. S. 479, Section 133. Under the record in this case and the law applicable thereto, Mr. Parker had a right to assign the weekly compensation checks issued to him by the insurance company to the Highway Department in consideration that his name remain on the payroll and he be paid his regular salary by the Highway Department. If he knowingly entered into such a contract or agreement and voluntarily assigned these weekly checks and accepted his usual salary during all this period of time, then he cannot recover the amount of these checks in any legal proceeding. **Rutherford v. McIvor,** 21 Ala. 750; **Rice v. Tuscaloosa Courty,** 4 So. 2d. 497, 500; 53 A. L. R. 949; 21 R. C. L. 171.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 7, 1942.

Hon. J. H. Green, Clerk,
Circuit Court, Morgan County,
Decatur, Alabama.

Sheriff entitled to fee of $5.00 in each capital case for which a jury is summoned, regardless of the fact that the same jury is drawn for the trial of more than one case.

Opinion by the Attorney General.

Dear Sir:

Your letter of June 19, 1942, in which you request an official opinion, is as follows:

"This week in our Circuit Court we had four capital cases set for Wednesday, June 17th. One special jury was drawn and summoned to serve in the four cases. The Sheriff is entitled to a fee of $5.00 for summoning special jury in capital case.

"In this instance, would the Sheriff be entitled to the $5.00 fee in each case, or would he be entitled to one $5.00 fee?"

In my opinion, the Sheriff is entitled to a fee of $5.00 in each capital case for the trial of which he has summoned a jury.

Section 68, Title 30, Code of Alabama, 1940, authorizes the judge of any court trying capital felonies to set two or more capital cases for trial on the same day, if he deems proper, and further authorizes the judge to draw and have summoned one jury or one venire facias of petit jurors for the trial of all the cases set for trial on the same day.

The fees allowed Sheriffs in criminal cases are enumerated in Section 100 of Title 11, Code of Alabama, 1940, the pertinent part of which is as follows:

"For summoning jury in capital case, or in any special court for the trial of criminal to be paid out of the county treasury .....$5.00."

It is my judgment that the Sheriff is entitled to his fee in each of the capital cases.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 14, 1942.

Hon. James A. Simpson,
State Senator,
Jefferson County,
Birmingham, Alabama.

Health Laws—Jurisdiction of State and County Boards of Health—

1. The state and county boards of health are vested with general supervision and control over all water supplies in the State insofar as purity, potability and wholesomeness of waters furnished may affect the public health or comfort.

2. Such supervision extends to any person, firm, or private corporation supplying or furnishing water.

3. It is immaterial whether such water is furnished or supplied under contract or gratuitously.

4. The health board has authority to condemn and abate such water supplies and the sources thereof.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your letter of January 14, 1942, in which you request an official opinion, is as follows:

"Would you be good enough to construe Title 22 Chapter 3 of the Code of 1940 (Sections 117 to 140, inclusive), and particularly Sections 135 and 139, with respect to the following situation:

"A mining company operates a coal mine and adjacent thereto owns and rents to its employees houses in a typical mining village sometimes called a camp. These houses are let to the company's employees under a written lease which contains no reference to the supplying of water to the occupants. In contracts of hire made with its employees the company assumes no obligation to supply them with water.

"The company operates a coal washer on these premises and has built a reservoir nearby to which it pumps river water for use in the operation of its washer. To make water available in the village for fire protection, it, some years ago, ran a line through the village and installed spigots and turn-outs thereon in and near many of the houses. Other water available being very hard, occupants of these houses use the river water for clothes washing and probably for other domestic purposes. The company cannot and does not attempt to control these usages.

"Some years ago the company drilled a number of wells throughout the village which are still in existence and from which the inhabitants of the village draw water by hand which they use for drinking and other domestic purposes. The company was not then and is not now under any obligation to furnish drinking water to any of the inhabitants of the village.

"It should be said, however, that the company has an indirect interest in the obtaining of water for domestic uses by these people in that it is probable that if they were not able to obtain water conveniently, they might sever their contracts of employment with the company and move elsewhere and make its labor supply difficult to obtain. This is the only interest, contractual, moral, legal or otherwise which the company has in this water supply.

"The Acting State Health Officer has condemned both water supplies as unfit for human consumption and has ordered the company operating the coal mine to install a water system which will cost many thousands of dollars to supply water to this village.

"(1) Is the mining company, or are its officers, guilty of a violation of Section 135 or Section 139, Title 22 Code of 1940 if they continue to permit the inhabitants of this mining village to draw water from these wells or from spigots attached to the water line from the reservoir above described, knowing that if they do not nail up the wells and cut off the wa-

ter line, that water so obtained will likely or probably be used by these people for domestic purposes as they have heretofore been doing for a long period of time?

"(2) Has the Board of Health of the State of Alabama or the State Health Officer the authority to compel this mining company to expend funds to construct a water supply for its employees?

"(3) If the inhabitants of this village are notified that if they use such water, they use it at their own peril. and if they do use it without the invitation, solicitation or recommendation of the mining company, would their acts in the premises make the mining company guilty of any offense under said Chapter 3 Title 22?"

Your questions involve a consideration of a mere section of the elaborate system of public health laws of this State codified in Title 22, Sections 1-279 of the Code of 1940. These provisions are based upon and are carved out of that vast legislative domain known as the police powers of the sovereign State. A consideration of this entire system is proper, if not absolutely necessary, in a construction of any of its subdivisions.

The preservation of public health is one of the prime duties devolving upon the State as a sovereign power. 25 Amer. Jur. 287, Section 3. The general rule is that statutes delegating to governmental agencies power to enact and enforce health regulations are to be liberally construed in order to effectuate the purposes of their enactment. However, this rule cannot be used to destroy or unduly hamper the other rule of law that governmental agencies have only such powers as are conferred upon them by statute expressly or by necessary implication. 25 Amer. Jur. p. 291, Section 8 and p. 293, Section 11.

The statute has created a state board of health and invested it with sweeping powers. Code 1940, Title 22, Sections 1 and 7. It has also created county boards of health with many enumerated powers. Such boards are under the general supervision of the state board of health. Code 1940, Title 22, Sections 4, 6 and 8. Among the named powers in that these boards have authority to investigate industrial and manufacturing establishments, offices, stores, banks, clubhouses, rooming houses and even residences. Sections 7 and 8, supra. These same sections grant authority to these boards to examine the sources of supply of drinking water and to correct and abate insanitary conditions. See also Sections 14, 75, 76 and 137; 25 Amer. Jur. 306, Section 29.

Running through all these statutory provisions is a clear effort to have pure drinking water. There are too many provisions vesting authority in the board in this system for me to attempt a detailed consideration. It is clear from the provisions I have cited that the boards have authority to investigate private homes as well as public or quasi public institutions to ascertain insanitary conditions and to suggest methods of correction or to correct or abate the same. In the light of these powers and authority vested in the boards, Chapter 3, Title 22, Sections 117-140, referred to in your letter, must be considered.

Section 117 vests general supervision in and control over all water supplies in the State, insofar as purity, potability, wholesomeness and physical quality of waters furnished may affect the public health, in the state board of health. Section 118 provides that every person, firm, or private corporation furnishing or supplying water for human consumption or for domestic use shall furnish containers satisfactory to the state board of health. Section 121 exempts persons supplying water solely for use on his or its private property **upon which there is no industrial camp,** hotel, temporary resort or permanent resort using said waters. This exemption, however, is addressing itself to Section 120 requiring filing of petition for permits, etc.

Any person, firm or corporation who shall negligently or knowingly furnish or supply water intended to be used for human consumption which is impure, etc., is guilty of a misdemeanor. Section 135. Section 131 authorizes the use of injunctive powers of the courts. Section 137 authorizes the institution of proceedings for abatement of the maintenance of such water supplies. It is important to notice some of the words used in these sections. They forbid the furnishing or supplying of water. The word "supply" means to give, to help, to aid, etc. The word "furnish" in its common and usual application means to supply or provide in any other way than sale. 2 Words & Phrases, 5th Ed.

From the language of the provisions of this chapter, as well as the other provisions of the health laws, it becomes evident that the law is not limited to contractual duty to furnish water, but is broad enough to include waters furnished gratuitously. From your letter it appears that the coal company owns every house in the village, and all the ground therein. The company has installed a water system for fire protection to the village and has installed spigots and turn-outs thereon in and near many of the houses and the occupants use this water for domestic purposes without objection from the company and presumably with the implied consent of the company. It is to be inferred from your letter that this is an established custom. It also expressly appears from your letter that the company some years ago drilled a number of wells **throughout the village,** which are still in use by its inhabitants for drinking water.

The question forces itself upon me, For what purpose was these wells drilled **throughout the village?** Certainly not for fire protection for the company has such a system. Wells of this character are generally sunk to find and furnish water for human consumption and your letter shows that water otherwise was hard to acquire. From all the circumstances that appear, the inevitable conclusion must follow that the company was furnishing drinking water to its employees and was intending to furnish all who occupied houses in this company village and this brings the company within the jurisdiction of the state and county boards of health.

Your questions are so drawn as to make specific and detailed answers difficult. In some instances the questions go beyond the provisions of the law and seek information in such cases. However, I will undertake to answer somewhat in detail.

The board has the authority to condemn the water supply of the company referred to in your letter if it is found to be unfit for human consumption. The board also has authority to forbid the company from supplying or furnishing this water to its employees or tenants. It also has power to condemn and abate the sources of such supply. Its power does not stop at authority to condemn and abate. It may regulate the use and manner of supplying or furnishing by giving direction to those furnishing such waters. The reasonableness of the action of the board is subject to review by the courts as is clearly pointed out and authorized by Section 138 of this Chapter. If the company fails or declines to take the course herein pointed out, then it subjects itself to the provisions of Sections 135 and 139 of Chapter 3. Limiting my opinion to the peculiar facts of this case, I will answer your question numbered 2 by saying that if the company stopped the furnishing or supplying of the waters referred to in your letter and declined to make any attempt to furnish waters to the employees or to establish any water system or to improve the one they have, then the board would not have authority to compel the mining company to expend funds to construct a water supply for its employees.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 20, 1942.

Hon. George Darwin,
Tax Assessor, Madison County
Huntsville, Alabama.

Taxation—United States—Eminent Domain—

In condemnation proceedings instituted by the Federal Government for war emergency purposes by virtue of Section 171 of Title 50 of U. S. C. A. in the Federal District Court, the title to said property does not pass to the Federal Government until the filing of a declaration of taking and the depositing into the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration under Section 258 (a) of Title 407, U. S. C. A. The mere granting of possession to the Federal Government by the court upon the filing of the petition of condemnation is not sufficient, of itself, to pass title to the Federal Government. If title does not pass to the Federal Government prior to October 1, 1941, the property in question is assessable for ad valorem taxation as of October 1, 1941, for taxes payable as of October 1, 1942.

Opinion by the Attorney General.

Dear Sir:

Your letter of October 3, 1941, in which you request an official opinion, is as follows:

"Enclosed herewith you will please find copy of the decree dated July 23, 1941, under which the Government took possession of 33,000 acres of land, more or less in Madison County.

"According to your instructions given me when I was in Montgomery last Tuesday, I wrote to Mr. Robt. Giles—Assistant District Attorney in Birmingham, asking him to mail me this copy which I am enclosing, and I have just received it, and am mailing same to you at once, and I would like to have a ruling from you as to whether or not this property should be assessed for the tax year 1942, which time of assessment began Oct. 1, 1941, for the tax year 1942, and I will thank you if you can give me this information as soon as you possibly can."

You enclose a certified copy of the decree of the Federal District Court dated July 23, 1941, under which the Government took immediate possession of 33,000 acres of land, more or less, in Madison County, Alabama. The heading of the decree is styled "Order Setting Day for Hearing Petition." Under said decree, September 23, 1941, was the date set for the hearing of the petition. It was ordered that the parties in interest be properly served, etc., and, in addition thereto, provided as follows:

"It further appearing that the United States of America has made certain and adequate provision for payment of just compensation to the party or parties entitled thereto by an appropriation included in the Act of Congress approved April 5, 1941 (Public No. 29—77th Congress);

"And it further appearing to the Court that under Section 171 of Title 50 of the U. S. C. A., in acquiring lands by condemnation proceedings, thereunder in time of war, or in imminence thereof, immediate possession thereof may be taken to the extent of the interest sought to be acquired and the lands may be occupied for military purposes, the Court finds the fact to be that the acquisition sought in this proceeding is in imminence of war, and concludes that under the law petitioner is entitled to and is hereby granted an order of immediate possession in accordance with the prayer of said petition.

"Now, therefore, it is hereby ORDERED and DIRECTED that leave be, and is hereby granted to the United States of America to take immediate possession of said land, a description of which is contained in the petition filed in this cause, and which will be attached to the notices to be served on the defendants herein, to the extent of the interest to be acquired by the United States of America and to proceed with such public works thereon as have been authorized by Congress; and, it is further ORDERED and DIRECTED that inasmuch as the United States of America has made certain and adequate provision for the payment of just compensation to the party or parties entitled thereto by virtue of

appropriations made by Congress therefor, as hereinabove more fully set forth, it will not be necessary that the United States of America deposit or cause to be deposited any sum or sums of money, or other form of security of any amount or any nature for the purpose of securing the payment of just compensation to the party or parties entitled thereto."

You also enclose decrees on the declarations of taking on five parcels of land included in the 33,000 acres, which decrees were dated September 3, 1941, September 3, 1941, September 8, 1941, September 8, 1941, and September 27, 1941, respectively. The decrees on the declarations of taking are in the following form in so far as pertinent to the instant inquiries.

"This cause coming on for hearing upon motion of Jim C. Smith, United States Attorney in and for the Northern District of Alabama, attorney for the petitioner herein, to enter a judgment on the Declaration of Taking filed herein and for an order fixing the date for the surrender of possession of the land herein described to the petitioner, and upon consideration thereof, and of the petition and Declaration of Taking filed herein and the statutes in such case made and provided, and it appearing to the satisfaction of the Court:

"1. That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed in said petition;

"2. That a petition in condemnation was filed at the request of the Secretary of War, the authority empowered by law to acquire the lands described in said petition, and also under authority of the Attorney General of the United States;

"3. That said petition and Declaration of Taking state the authority under which, and the public use for which said lands were taken, that the Secretary of War is the person duly authorized and empowered by law to acquire lands such as are described in the petition for the purposes therein set out, that the said lands have been selected by the Secretary of War for acquisition by the United States for use in connection with the establishment of the Huntsville Arsenal and for such other uses as may be authorized by Congress or by Executive Order and are acquired for immediate use, and that the Attorney General of the United States is the person authorized by law to direct the institution of such condemnation proceedings;

"4. That a proper description of the land sought to be taken sufficient for identification thereof, is set out in said Declaration of Taking;

"5. That said Declaration of Taking contains a statement of the estate or interest in the said lands taken for said public use;

"6. That a statement is contained in said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for said lands, in the amount of ....., and that said sum was deposited in the Registry of this Court for the use of the persons entitled thereto, upon and at the time of the filing of said Declaration of Taking;

"7. That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation, for the taking of said property, in the opinion of said Secretary of War, will be within any limits prescribed by law as to the price to be paid therefor;

"It is, therefore, ORDERED, ADJUDGED, and DECREED that the title to the following described lands in fee simple vested in the United States of America upon the filing of said Declaration of Taking and the depositing in the Registry of this Court of the said sum of ....., the said lands are deemed to have been condemned and taken for the use of the United States of America and the right to just compensation for the property taken, upon the filing of the Declaration of Taking and making of the deposit, vested in the persons entitled thereto; and,

"The United States is authorized to record in the office of the Judge of Probate of Madison County, Alabama, a certified copy of this decree, in lieu of filing and recording therein a lis pendens notice."

It appears that the condemnation proceedings were instituted under the authority of Section 171 of Title 50 of U. S. C. A. This section provides that the Secretary of War may cause proceedings to be instituted in the name of the United States for emergency war purposes and that immediate possession may be given to the Federal Government. The proceedings were brought in the Federal District Court and declarations of taking were filed as to five parcels of the 33,000 acres, in accordance with Section 258-a of Title 40, U. S. C. A. Said section provides for the filing of declaration of taking and specifically provides when the title to the land sought to be condemned passes to the United States of America. Subsection (5) of Section 258-a provides in pertinent part as follows:

"(5) *** **Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States,** and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage. *** " (Emphasis supplied)

The two above-cited provisions of U. S. C. A. were construed in the case of **United States v. 72 Acres of Land, etc.**, D. C., 37 F. Supp. 297, by the Federal District Court of California, and the constitutionality of same was upheld. In regard to the title of the lands sought to be condemned, the court, in its opinion, observed as follows:

"The title which vests upon the filing of the declaration and the making of the deposit is lacking in practical effect until some muniment of title is provided. It is usual and common practice for the court to enter judgment on the declaration of taking and such judgments are not subject to attack as unauthorized or in excess of jurisdiction. United States v. Eighty Acres of Land, supra; Hessel v. Smith & C.,— D. C., 15 F. Supp. 953. Compare United States v. Meyer, supra."

The former decisions of the Federal District Courts in regard to when title passes to the Federal Government in such condemnation proceedings are not applicable to the instant case in view of the specific statutory authority hereinabove referred to. Cf. **Hessel v. Smith & Co.,** D. C., 15 Fed. Supp. 953 and **Forbes v. United States,** D. C. 259 Fed. 585, affirmed C. C. A., 268 Fed. 273; **In re: Trading Camp in Prentice County, Va.,** D. C. 260 Fed. 986.

The question as to when title passes to the Federal Government is of paramount importance in determining the matter of your inquiry in view of the fact that October 1 of any year is the tax date that determines the liability of persons and property for ad valorem taxation. The property is assessable by the taxable owner thereof and the tax lien attaches as of October 1 of one year and the tax is payable as of October 1 of the succeeding year. **United States v. Alabama** (U. S. Sup. Ct.), 85 L. ed. 896; **State v. Alabama Educational Foundation,** 231 Ala. 11, 163 So. 527; Quarterly Report of Attorney General, Volume VII, page 237.

Applying this rule to the instant case, it must be determined as to whether title to the property in question for taxation purposes passed to the Federal Government before October 1, 1941. If it did, the property is not subject to taxation for those taxes payable as of October 1, 1942. If it did not, the property is subject to taxation October 1, 1941, for the taxes payable October 1, 1942.

In view of the specific statutory provisions of Section 258-a, supra, above-quoted in part, and the citation of authorities construing said provisions, it follows that the title passed to the Federal Government upon the filing of the declaration of taking and of the deposit in the court to the use of the persons entitled thereto of the amount of estimated compensation stated in said declaration. Opinion of Attorney General to Tax Assessor, Talladega County, on January 20, 1942 (copy enclosed).

Therefore, in regard to the five parcels of land covered in the decrees on declaration of taking the title passed to the Federal Government as of the date of said decrees which in each instance was before October 1, 1941. Said parcels are not subject to assessment by the former owners thereof as of October 1, 1941, and are not subject to taxes due as of October 1, 1942.

In regard to the remaining portion of the 33,000 acres in question (that part not covered by the five decrees on declaration of taking), a more difficult question is presented. In my judgment, the decree of the court dated July 23, 1941, is not, of itself, sufficient to vest title in the Federal Government, although the Federal Government was given a right of immediate

possession. The statute specifically provides when a title vests in the Federal Government and for aught that appears the two conditions precedent, i. e., the filing of the declaration of taking and the deposit of the moneys into court, had not been met prior to October 1, 1941.

Under the provisions of Section 258-a-e, Title 40, U. S. C. A., the declaration of taking may be filed with the petition of condemnation or thereafter. **United States v. Eighty Acres of Land, etc.,** D. C., 26 Fed. Supp. 315. Although the Federal Government took possession of the property prior to October 1, 1941, yet, as above stated, for aught that appears the filing of the declarations of taking and the deposit of money into court were not done prior to that date. The taking of possession under the decree of the court on the filing of the petition was authorized and the owners of the property were protected. In this connection, I wish to refer you to the case of **Hessel v. Smith & Co.,** supra, wherein the court stated:

"In Commercial Station Post Office et al. v. United States, 48 F. (2d) 183 (C. C. A. 8), the court upheld the action of the District Court in entering an order, without the benefit of express statutory authority, permitting the United States to take immediate possession of the land sought to be condemned for a post office site pending the conclusion of a suit for condemnation where, in the judgment of the court, adequate provision had been made to pay for such possession even in the event of a possible subsequent abandonment. The court said: 'It is settled that the government may take possession in advance of passing of title or of abandonment of the condemnation proceeding (Hanson Lumber Co. v. United States, 261 U. S. 581, 587, 43 S. Ct. 442, 67 L. ed. 809), and that, while payment must be made for the use of the property during such advance possession (Seaboard Air Line Ry. v. U. S. 261 U. S. 299, 305, 43 S. Ct. 354, 67 L. Ed. 664; U. S. v. Rogers, 255 U. S. 163, 169, 41 S. Ct. 281, 65 L. Ed. 566), yet it need not make such payment at the time of taking possession (Seaboard Air Line Case, supra, page 306 of 261 U. S., 43 S. Ct. 354 (67 L. Ed. 664); Cherokee National v. Kansas Ry. Co., 135 U. S. 641, 659, 10 S. Ct. 965, 34 L. Ed. 295), but that the owner is sufficiently protected if adequate provision for payment for possession be made at the time of taking possession (Joslin Co. v. Providence, 262 U. S. 668, 677, 43 S. Ct. 684, 67 L. Ed. 1167; Hanson Lumber Co. v. U. S., 261 U. S. 581, 587, 43 S. Ct. 442, 67 L. Ed. 809).' 48 F. (2d) 183, at pages 184-185.

"Thus it seems well settled that the United States may lawfully take possession and proceed with its use of land sought to be condemned prior to trial, judgment, and payment of the judgment, if adequate provision be made for ultimate payment of just compensation to the land owner.

"What of the right of the government to take title prior to judgment and payment of just compensation?

"The Statements in numerous cases that title does not pass until after judgment and payment of compensation are unquestionably correct where there is no statutory provision for divesting and investing of title prior to judgment and payment based upon reasonable, certain, and adequate provision for due ascertainment and payment of just compen-

sation. If none of those cases was such a statute involved, and in no case, so far as I am advised, has the validity of such statutory provision been passed upon. In no case has the rule been asserted that title may not lawfully pass by appropriate statutory proceedings prior to judgment and payment of compensation where adequate statutory provision duly complied with has been made for ascertainment by usual procedural methods and payment of just compensation when ascertained."

It can be seen from the above that the Federal Government may legally take possession prior to the passing of the title and in view of the specific statutory provisions I do not think the title passes merely by the Federal Government taking possession under the preliminary order of the court.

However, in regard to this remaining portion of the 33,000 acres in question, it has been suggested that there is another principle of law which might exempt said remaining portion from ad valorem taxation for those taxes accruing as of October 1, 1941, and payable as of October 1, 1942. This office in an opinion rendered to the Tax Assessor of Talladega County on October 21, 1941 (copy enclosed) held that real property in possession of the Federal Government, as purchaser, under executory contract of purchase was not subject to ad valorem taxes. Said opinion was based on the case of **Crow, Tax Collector v. Outlaw,** 225 Ala. 656, 145 So. 133, wherein the court observed:

"The bill as originally filed sought injunctive relief against the sale for taxes of the real estate therein described, upon the theory that, though complainant was in possession under an executory contract of purchase from the City of Mobile, yet no conveyance had been executed and the legal title remained in the city, and the property was therefore exempt from taxation. But in State v. White Furniture Company, 206 Ala. 575, 90 So. 896, the court said: 'It is well settled that when the vendee of real property is in possession under an executory contract of sale, he is liable to be taxed as the owner.' The theory of the original bill was therefore untaxable."

The rule set out in the Crow case was applied conversely and it was held that the property in possession of the Federal Government under an executory contract of purchase, wherein the Federal Government was the purchaser, was exempt from ad valorem taxation. The same would be applicable to property held by the Federal Government, as purchaser, under executory contract to purchase. (Code of 1940, Title 51, Section 2).

In my opinion, this principle of law is not applicable to the instant situation in regard to that part of the 33,000 acres not included in the five decrees on declaration of taking. It may be true that the Federal Government went into possession of said property prior to October 1, 1941. However, there is nothing to prevent the abandonment of the proceedings. The proceedings were brought under the direction of the Secretary of War and he is the proper party to determine the necessity of the acquisition of lands, decide upon the amount of property to be taken and the particular tract to be taken, and in such case the determination of the Secretary of War is conclusive and not subject to review by the courts except for fraud or bad

faith. **United States v. 72 Acres of Land, etc.,** supra. This being true, it cannot be said that the title vestes in the Federal Government before the provisions of Section 258-a, supra, have been met. Of course, in the case of abandonment, the property owners are protected, as above pointed out, under the decision of the Hessel case. An executory contract of purchase is subject to specific performance, whereas in the condemnation proceeding under consideration such is not the case. If the Secretary of War decided to abandon the proceedings, the same, in my opinion, would not be subject to review by the court.—Authorities, supra.

It, therefore, follows that, in my judgment, the title to the remaining portion of the land not included in the five specific orders above mentioned would not vest in the Federal Government prior to October 1, 1941, and, consequently, the same should be assessed by the individual owners on October 1, 1941, for the taxes payable as of October 1, 1942. The tax lien attaches to the property as of October 1, 1941, and said land is, consequently, liable for the taxes payable as of October 1, 1942. **United States v. State of Alabama,** supra; **State v. Alabama Educational Foundation,** supra.

In view of the foregoing discussion, it is my opinion that the five parcels of property included in the five decrees on declaration of taking are exempt from ad valorem taxation for the year 1941-42 and that the remainder of the 33,000 acres, i. e., that portion not covered in said decrees, is subject to taxation for the year 1941-1942 and proper assessment thereof should be made.

It is suggested that petition be filed in the Federal Court in which the proceedings are pending setting up the claims for the amount of ad valorem taxes payable as of October 1, 1941, as to all of the 33,000 acres, and for ad valorem taxes payable as of October 1, 1942, (the amount to be subsequently ascertained) as to that part of the 33,000 acres not included in the five decrees on the declarations of taking.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 20, 1942.

Hon. B. P. Singleton,
Chief Examiner of Accounts,
Department of Finance,
Montgomery, Alabama.

Probation—Costs.

Where defendant, under terms of probation is required to pay part of the costs and Department of Corrections and Institutions pays costs required by statute and the costs paid by said department does not cover all of the costs in the case, then the amount

of the costs paid by defendant is prorated. If, however, costs paid by the Department of Corrections and Institutions covers all the costs in the case, then the cost paid by defendant is remitted to said department.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your request for official opinion bearing date of February 12, 1942, is as follows:

"Will you please render me your opinion regarding the following:

"1. 'Execution of sentence suspended pending good behaviour of defendant for the period of ..... and at expiration of said period the same suspension is hereby made permanent.'

"In such cases the defendant does not make any oral or written application for the benefits of probation. The matter is not referred to the Probation Officer for any investigation and subsequent to the defendant's release on said order no supervision is had of the said defendant by the Probation Officer. These cases are not being entered on the Probation docket and are not considered or treated as other probation cases by the Clerk.

"Under the facts set out supra the following queries have arisen:

"a. Is such order tantamount to the defendant being placed upon probation within the purview of Title 42 of the Code of 1941? (Or Acts of 1939.)

"b. Are the costs in such cases legally and properly payable by the Department of Corrections and Institutions? (Title 42, Section 25, Code of 1941.)

"c. If your answer to questions a. and b. are in the affirmative, should not these cases be properly docketed on the Probation docket by the Clerk?

"d. Can such cases be legally and properly docketed notwithstanding any order of the Court so directing?

"2. 'Defendant adjudged guilty, sentenced to penitentiary for five years and on motion of defendant this case ordered placed on Probation docket for hearing on this day. Defendant's oral request for probation granted . . . '

"There are no questions in regard to this judgment which have not been previously answered or are awaiting opinions. This case was placed on the Probation docket.

"To further illustrate the pronounced line of demarcation drawn between these two judgment entries, permit me to set out in detail the entries and notations appearing on one specific case:

> " 'Case No. 302 . . . A. C. Manning . . . Manslaughter, First Degree: May 1, 1940. Defendant adjudged guilty, sentenced to penitentiary for five years and on motion of the defendant this case ordered placed on Probation docket for hearing this day. Defendant's oral request for probation granted.' (On May 1, 1940, the Court placed the defendant on probation pending good behavior and taxed him with all costs in the original case and also the costs in the probation proceedings.)
>
> " 'September 8, 1941, with consent of State Solicitor all orders heretofore made taxing defendant with costs of these proceedings and probation proceedings pertaining to this case set aside, and execution of sentence suspended pending the good behaviour of the defendant on the grounds that the defendant pay $50.00 towards the costs of court, which said $50.00 when collected by the Clerk to be paid by said Clerk disbursed as follows: $1.50 towards State Trial Tax and the balance paid into the County Treasury.'

"The following notations were made on the Probation docket: 'For final disposition of proceedings in re probation. See entry on original Case No. 302.' This case was then removed from the Probation docket and finally disposed of. The records reflect that on September 8, 1941, the Clerk collected from the defendant the sum of $50.00 and made disbursements as set out, supra. On October 1, 1941, he received a warrant from the State Department of Corrections and Institutions, in the amount of $163.40, in payment of those items on cost bill rendered in May, 1940.

"a. I would like to know, if in view of the judgment entries set out supra, if the payment by the State on October 1, 1941, was a legal and proper one, in view of the fact that the order of August 1, 1940, suspending the sentence and placing the defendant on PROBATION was vacated, set aside, nullified and superceded by the judgment entry of September 8, 1941?

"b. If this payment was legal and proper what disposition should have been made of the $50.00 collected from the defendant in the order of September 8, 1941, in view of the opinions of the Attorney General in re partial collection and distribution of costs in probation cases?

"It would appear from the verbage of Section 25, Title 42, Code of 1941, that in order for the costs to be paid by the State that there must be in addition to the suspended sentence an order placing the defendant on PROBATION, as there is no 'comma' following the word 'suspended' and the words 'and' or 'or' are not used.

"If the judgment entry numbered No. 1, is not tantamount to an order placing the defendant on PROBATION, it would then follow that the Department of Corrections and Institutions could not legally pay the cost bills in such cases, and where they have been paid that the money so collected should be refunded to the State."

In my judgment, your question designated as (a) under inquiry Number 1, should be answered in the affirmative.

Except in cases where a discretion as to the imposition of punishment is by the statute denouncing the offense reposed in the court (Code 1940, Title 15, Section 334), the only authority Circuit Courts and Courts of Record, from whose judgments appeal lies directly to the Court of Appeals or Supreme Court, have to suspend execution of sentence is found in what is commonly known as the "Probation Act." (Code 1940, Title 42, Sections 19, etc.). This being true, and assuming that the order of the court, which is set out in the second paragraph of your letter, was not made in a case falling within the exception heretofore pointed out, it is my opinion that the only logical conclusion that can be reached is that the said order amounted to, or was tantamount to placing the defendant upon probation. There is no prescribed form which a court must follow in making its order placing a defendant upon probation, and to say that the order here under consideration did not amount to the same because the word "probation" was not used, would be to place a strained and narrow construction upon the Probation Law.

In view of the conclusion hereinabove reached, it necessarily follows that your questions designated as (b), (c), and (d) under inquiry Number 1 must be answered in the affirmative. By way of explanation, I deem it advisable to point out that in such cases the clerk should follow the same procedure as he does in all other probation cases, and this would, of course, require that the same be docketed on his probation ticket.

I call your attention to the fact that there is nothing in the statutory law relating to probation which limits the authority of circuit courts and courts of record from whose judgment appeal lies directly to the Court of Appeals or to the Supreme Court, to those cases where the defendant expressly asks for the benefits of the probation laws. I also call your attention to the fact that such courts are not required to have an investigation made by the probation officer before they may place the defendant on probation, nor is the probation officer required to investigate all persons placed on probation. He is responsible only for those cases referred to him for investigation by the court. These conclusions are in accordance with the express terms of Sections 21 and 23 of Title 42, Code of Alabama, 1940.

Before answering the questions propounded under inquiry Number 2, I wish to call your attention to Code 1940, Title 42, Section 22, which provides as follows:

"§ 22. Condition of probation.—The court shall determine and may at any time modify the conditions of probation and may include among them the following, or any other: That the probationer shall: Avoid

injurious or vicious habits; avoid persons or places of disreputable or harmful character; report to the probation officer as directed; permit the probation officer to visit him at his home or elsewhere; work faithfully at suitable employments as far as possible; remain within a specified place; pay the fine imposed, or costs or such portions thereof as the court may determine, and in such installments as the court may direct; make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court; support his dependents to the best of his ability."

It will be noted that under the provisions of the above quoted section the "court may at any time modify the conditions of probation" and in my opinion, the court was merely exercising this power when it made the order changing the conditions of probation in the case designated as No. 302, under your second inquiry. Furthermore, it is my opinion, in view of my conclusion to your first inquiry, that the order of the court in case No. 302, made and entered on September 8, 1941, amounted to, or was tantamount to continuing the probation of the defendant—the terms of the original order placing the defendant upon probation merely having been changed or modified. Therefore, answering your question designated (a) under your second inquiry, it is my opinion that the payment by the Department of Corrections and Institutions was legal. (Quarterly Report of Attorney General, Volume XVII, page 87).

The question then arises as to what disposition should be made as to the costs paid by the defendant? Answering this question, I first call your attention to the fact that the trial tax due the State should be paid in full from the amount paid by the defendant as the same is an item of revenue and is a tax rather than a part of the costs. Quarterly Report of Attorney General, Volume XV, page 301. As to the balance, if the costs paid by the Department of Corrections and Institutions did not cover all of the costs in the case, then the amount paid by the defendant should be prorated. If, however, the costs paid by the Department of Corrections and Institutions covered all of the costs in the said case, then the amount of costs paid by the defendant should be remitted to the said Department. In connection with the conclusion hereinabove reached, see the following opinions. Quarterly Report of Attorney General, Volume XXI, page 125 (3rd situation discussed). Opinion to Hon. B. P. Singleton, Chief Examiner of Public Accounts, Montgomery, Alabama, dated June 27, 1942.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 22, 1942.

Hon. William J. Kern, Clerk,
Inferior Criminal Court,
Mobile, Alabama.

Costs and Fees—Highway Patrol—Judgments—

1. An arrest fee is not authorized in cases where the arrest is made by a Highway Patrolman.

2. Where there is judgment for a certain amount of money and for costs, the first money received in satisfaction of such judgment goes to the payment of the costs.

Opinion by Assistant Attorney General Vardaman.

Dear Sir:

Your request for official opinion, bearing date of February 25, 1942, is as follows:

"Please render me your valuable opinion as to the following as early as practicable:

"1. Where an Alabama Highway Patrol officer arrests a person for a traffic violation and obtains a conviction against the defendant in this Court on a warrant issued from this Court for such violation, is an arrest fee of $2.00 legally chargeable against this defendant as in cases where the Sheriff of Mobile County makes such an arrest?

"2. Where the following Court order is made in the Inferior Civil Court of Mobile: 'This day came the plaintiff and it being shown to the Court that the plaintiff heretofore on the ..... day of ....., 1942, recovered judgment against the defendant for the sum of $..... and costs of the Court, and the Garnishee ....., having filed an answer in this cause admitting that it was indebted to the defendant in the sum of $....., upon motion of Plaintiff, it is ordered and adjudged by the Court that the sum of $..... in the hands of the Garnishee ..... be and the same is hereby condemned to a partial satisfaction of said judgment and costs, for the recovery of which let execution issue. Witness my hand this ..... day of ....., 1942, ... Ex Officio Judge of the Inferior Civil Court of Mobile.'—and where the Garnishee paid to the Clerk of this Court said sum without the necessity of the issuance of an execution for the recovery of same, does it or not, become the legal duty of the Clerk to prorate by mathematical precision such sum towards the partial satisfaction of said judgments and costs?"

It is my opinion that your first inquiry must be answered in the negative.

The State Highway Patrol is authorized by the Code of 1940, Title 36, Section 71. This Section provides that members of the State Highway Patrol, when so authorized in writing by the Governor, shall have the powers of peace officers in the State. It also provides that all costs and fees due such officers shall be paid into the highway patrol fund. However, this section fails to authorize the taxation or collection of any specific costs for such highway patrol officers.

The fact that highway patrol officers are given the powers of peace officers cannot be construed to authorize them to charge the same fees as peace officers, as "peace officer" is a relative term, covering all law enforcement officers, such as sheriffs, constables, patrolmen, policemen, etc., and different schedules of fees are set up for these various types of peace officers.

Furthermore, in this State, the law of costs and fees is penal in nature, and no fee must be charged unless it is expressly provided for by law. Code of 1940, Title 11, Section 79.

I am unable to find any provision or law authorizing the taxation of an arrest fee where an arrest is made by a highway patrolman. Therefore, it is my opinion that an arrest fee of $2.00 is not chargeable in cases where the arrest is made by a highway patrolman.

I am cognizant of the provision in Section 71 of Title 36, Code of 1940, which is as follows:

> "§ 71. In all cases where arrests are made by a state highway patrol officer all arrest fees for such arrests shall be collected by the proper authorities and promptly turned over to the director of public safety who shall cover the same into the highway patrol fund, and such fees shall become a part thereof to be expended as other monies in said fund are authorized to be expended."

This language was added by the Code Committee, no doubt in an effort to require the taxation of an arrest fee where an arrest is made by a highway patrol officer; however, in my opinion, it is insufficient in that the amount of the fee is not designated either expressly or by implication. In the absence of language indicating the amount of the fee to be taxed, the clerk would not know how much to tax, inasmuch as the arrest fee allowed sheriffs and other peace officers are not the same.

The right of highway patrolmen to receive witness fees, mileage, and certain informer fees is not affected by this opinion, as these fees are provided for any individual who serves as a witness or as an informer. Such fees must, of course, be paid into the highway patrol fund, in accordance with the mandates of Code of 1940, Title 36, Section 71.

It is my opinion that your second inquiry must also be answered in the negative. The first money collected in such a situation should go to the payment of the costs. Opinion to Hon. Roy O. Hill, Clerk of the Circuit Court, Houston County, rendered June 14, 1938, Biennial Report of Attorney General, 1936-38, page 652, a copy of which opinion is herewith enclosed.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 22, 1942.

Hon. Thos. R. Lea,
Judge of Municipal Court of Birmingham,
Third Division,
Birmingham, Alabama.

Costs and Fees—Marriage—Justice of the Peace—

Fees received by Judges of the Municipal Court of Birmingham for celebrating the rites of matrimony should be turned over to the Jefferson County Treasury.

Opinion by Assistant Attorney General Vardaman.

Dear Sir:

Your request for official opinion, bearing date of February 11, 1942, is as follows:

"I desire the official opinion of your office as to whether or not fees charged or that could be charged by the Judge of the Municipal Court of Birmingham, Third Division for the performance of marriage ceremonies should be construed as fees to be paid to the Treasurer of Jefferson County."

It is my opinion that the fees chargeable by the Judge of the Municipal Court of Birmingham for the performance of marriage ceremonies should be paid into the treasury of Jefferson County.

The Municipal Court of Jefferson County was created by Act 124 H. 331, approved July 12, 1915, Local Acts of 1915, page 231. (The amendment found in Local Acts of 1927, p. 195 is not here material.) This Act provided, in Section 3, that the judges of the court should receive a salary payable from the county treasury. Section 7 of this Act, dealing with the collection of costs and fees, provided, in pertinent part, as follows:

"The fees and costs that are now allowed by law to justices of peace in Jefferson County, or which may hereafter be allowed by law to justices of peace in said county, shall be taxed and collected as now provided by law in such cases, or as may hereafter be provided by law in such cases, and shall, by the clerk of each division, be paid into the county treasury, and no clerk or judge of said court shall receive any fees or compensation other than his said salary; but all fees shall be paid into the County Treasury."

The fees allowed a justice of the peace in civil matters are set out in the Code of 1940 in Title 11, Section 38. This schedule of fees provides a fee of $1.50 for celebrating the rites of matrimony. As stated in an opinion of this office, rendered to Hon. Chas. W. Lee, State Comptroller, on March 16, 1937, Quarterly Report of Attorney General, Vol. 6, page 140, a copy of which opinion is enclosed, this makes the fee for celebrating the rites of matrimony a part of the compensation of the office, rather than a personal fee, and therefore, it should be paid into the county treasury. The above cited opinion overruled, at least in legal effect, the opinion of this office to Hon. Joe Tate, Solicitor, Tenth Judicial Circuit, rendered July 19, 1919, (Biennial Report of Attorney General, 1918-1920, page 238).

Code of 1940, Title 34, Section 18, (Code of 1923, Section 9005) is not discussed in this opinion in view of recent opinion of this office rendered to Hon. J. F. Laseter, Judge of Probate, Barbour County, on May 30, 1941, Quarterly Report of Attorney General, Vol. 23, page 187, which held that a probate judge was entitled to a fee of $1.50 for celebrating the rites of matrimony, as provided for in the probate judge's schedule of fees (Code 1940, Title 11, Section 29) (Code of 1923, Section 7285), rather than the $2.00 fee provided for by Title 34, Section 18. I am also enclosing a copy of this opinion.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 23, 1942.

Hon. Douglas L. Cannon, M. D.,
Director of County Health Work,
Department of Public Health,
Montgomery, Alabama.

Health—Traveling Expenses—State, Agency of—

Officers and employees of county departments of health are subject to the limitations of Title 41, Section 154, with reference to travel allowance.

Opinion by Attorney General Lawson.

Dear Sir:

Your request for official opinion bearing date of February 23, 1942, is as follows:

"Please give me your opinion regarding the following matter:

"Are members of the staff of the Jefferson County Health Department, working in Jefferson County and paid entirely from local funds, subject to limitation of travel funds, subject to limitation of $3.00 per diem, specified in Section 154 of Title 41 of the 1940 Code?"

The question presented in your inquiry is: Whether the provisions of Code 1940, Title 41, Section 154, are applicable and controlling as to members of the staff of the Jefferson County Health Department.

Code 1940, Title 41, Section 154, in pertinent part, reads as follows:

"§ 154. Limitation of per diem expenses.—The maximum amount allowable to persons traveling in the service of the State of Alabama or any of its agencies or institutions for expenses other than actual expense of transportation shall be three dollars per diem; provided, however, that in the following cases such limitations shall not prevail, but actual and necessary expenses shall be allowed except as otherwise provided: *** "

There is no exception made under this section of the Department of Health or of its officers and employees.

Under an opinion of this office, under date of September 20, 1937, to the State-wide Highway Planning Survey, Montgomery, Alabama, Quarterly Report, Volume 8, page 263, a county board of health was held to be an agency of the State, citing authorities therefor.

I am of the opinion that a member of the staff of the Jefferson County Health Department is an employee of an agency of the State of Alabama and as such is limited to a maximum of three dollars per diem for expenses, other than actual expenses of transportation, when traveling in the service of the State of Alabama. The provisions of Code 1940, Title 41, Section 154, are applicable and controlling as to expenses incurred by members of the staff of the Jefferson County Health Department, when paid out of funds appropriated by the County Health Department.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 24, 1942.

Hon. Reo. Kirkland,
Clerk of the Circuit Court,
Escambia County,
Brewton, Alabama.

Costs and Fees in Justice Courts—

The Department of Corrections and Institutions is not required to pay the costs which accrued in a justice court where the defendant was tried for on offense of which the justice had final jurisdiction and appealed to the circuit court and was there convicted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your request for official opinion, bearing date of April 10, 1942, which is as follows:

"Attached hereto you will find a Hard Labor Cost Bill presented by me to the Department of Corrections and Institutions in which the costs are claimed by me growing out of and appealing from the Justice Court to the Circuit Court.

"What I desire is an opinion from you as to whether or not the Department of Corrections and Institutions should remit to me the costs which accrued in the Justice Court.

"You will note that I only claimed five dollars ($5.00) for Justice of the Court (sic) (peace) fees, which I contend should be allowable under and by virtue of Title 45, Section 65 (sic) (69) of Alabama Code of 1940."

In making the request for this opinion, I note you say that you think you are entitled to collect this justice court costs under Title 45, Section 65, Code 1940, I am convinced that you made a mistake in this citation as Section 65 has to do with renting out state lands not being used by the Convict Department and, after due consideration, I am sure that you had reference to Title 45, Section 69, Code 1940.

Taking this view of the matter, I am of the opinion that the Department of Corrections and Institutions is correct in its interpretation of the costs in this particular case.

Where a defendant is convicted of a misdemeanor and is sentenced to hard labor to pay the fine and costs by a court having authority to sentence for costs, such costs are payable in part under Title 45, Section 69, Code 1940 (Section 3667, Code of Alabama, 1923). Under the above section, you will find no provision made for the payment of justices' and constables' costs where a conviction is had in the circuit court, which was there on an appeal

from the justice court. The provision you have in mind deals with the costs which accrue on a preliminary investigation before a committing magistrate, which is found in Section 69, supra, and is as follows:

> "Costs of committing magistrate and constable on preliminary trial, both together not to exceed five dollars."

This quotation is taken from Section 69, supra, which deals with items of costs which the State will pay on a conviction of a defendant where such defendant is sentenced either to the penitentiary or to hard labor for the county. The above provision has no reference to costs in justice courts where the defendant is tried for an offense of which the justice has final jurisdiction, appeals to the circuit court and is there convicted, as in the present case, but only, as stated above, to costs before a committing magistrate on a preliminary investigation. One of the reasons for this is that the statute prohibits a justice of the peace under any condition to sentence a defendant for costs. I call your attention to Title 13, Section 384, which is as follows:

> "§384. No jurisdiction to sentence to hard labor for costs.—It shall not be lawful for any justice of the peace, or notary public, with the powers of a justice of the peace, to sentence any person to hard labor for the non-payment of costs."

The conclusion here reached is not in conflict with that reached in an opinion rendered to Hon. Otis R. Emmons, Sheriff of Escambia County, a copy of which was sent to you, (Quarterly Report, Attorney General, Vol. XXIII, page 81), inasmuch as the language of Section 69, Title 45, Code 1940, here under consideration is different from that of Section 3667, Code of Alabama, 1923, considered in the opinion to Mr. Emmons. Cf. Opinion to Hon. B. P. Singleton, under date of December 30, 1940, (Quarterly Report, Attorney General, Vol. XXI, page 243).

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 24, 1942.

Hon. J. W. Stacks, Clerk,
Circuit Court of Tallapoosa County,
Dadeville, Alabama.

1. Duty of Circuit Clerk to prepare and keep direct and reverse indexes to all record books in his office is mandatory.

2. County cannot legally employ one to index record books in office of Circuit Clerk.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for an official opinion, bearing date of May 29, 1942, is as follows:

"For a period of approximately 10 (Ten) years between 1925 and 1935 no indexes were kept in any of our Court records. It is very necessary that these record books be indexed. We are called upon daily by Local Draft Boards all over the State wanting Criminal records of Selective service men.

"Would it be legal for the County to employ some one to index these records. There are provisions made for recopying of records when necessary, but I am unable to find anything pertaining to that particular phase of indexing.

"Please advise me immediately whether the County could hire anyone to do this work."

It is my opinion that your inquiry must be answered in the negative.

It is the duty of the circuit clerk to keep direct and reverse indexes to all record books in their offices. This duty is prescribed by Title 13, Section 198, subdivision 17, Code of Alabama, 1940, and is as follows:

"It is the duty of the clerk of the circuit court: * * * 17. To keep direct and reverse indexes of all record books in their offices, which must always be in good substantial, well-bound books; **but they are not required to prepare any new indexes where those already in the office are sufficient.** * * *" (Emphasis supplied).

I construe the emphasized portion of the above quotation to mean that if the indexes, both direct and reverse, of the record books in the clerk's office are insufficient it is the duty of the clerk to make new indexes to all of said record books. If there are no indexes at all to said record books then the indexes are insufficient and it is incumbent upon the clerk to prepare new indexes, both direct and reverse, for same.

The duty of the Clerk to keep and maintain sufficient indexes, both direct and reverse, to all books and records of his office is mandatory. There is a penalty for failure to keep such indexes. This penalty is prescribed under Title 13, Section 286, Code of Alabama, 1940, and is as follows:

"§286. Failure to keep direct and reverse indexes.—Any probate judge, clerk of the circuit court, or register who fails to keep direct and reverse indexes of all books and records in his office, as required by law to be kept, must, on conviction, be fined not more than five hundred dollars."

The premises considered, it is my opinion that you should forthwith prepare new indexes, both direct and reverse, to all record books in your office for the period set out in your inquiry, during which period no indexes were kept as required by law. Since this duty is imposed by law upon the circuit clerk, the county could not legally employ anyone to index said records or expend any money in this regard.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 24, 1942.

Hon. A. C. Cook,
Clerk, Circuit Court,
Wilcox County,
Camden, Alabama.

Statutes — Wilcox County — Fine and Forfeiture Fund — Fees — Sheriffs — Clerks of Circuit Courts —

1. Section 7 of Act No. 67, S. 6, approved December 12, 1892, Acts of Alabama, 1892-93, page 104, is not repealed by Section 7 of Act No. 183, S. 295, approved April 4, 1911, Local Acts, 1911, page 198, but rather is affirmed and continued in force thereby.

2. Act No. 253, S. 324, approved August 29, 1919, Local Acts, 1919, page 92, purporting to repeal Section 7 of Act No. 67, is effective for that purpose, and the provisions of said Section 7 (and the provisions of Section 7 of Act No. 183) ceased to exist as a part of the statutory law of this State upon the approval thereof.

3. The limitation of fifty per centum on the fees of the Circuit Clerk and Sheriff of Wilcox County in cases where the State failed to convict, or where a nolle prosequi is entered, or where an indictment is withdrawn and filed, contained in said Section 7 (and in Section 7 of Act No. 183), held inapplicable on and after August 29, 1919, the effective date of Act No. 253.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

Your request for official opinion bearing date of April 14, 1942, is as follows:

"Under Local Acts 1892—Page 104—act No. 67, Sec. 7, provided that the Clerk & Sheriff of Wilcox County receive only 50% of their Fine & Forfeiture Claims, under this act paid from the General Fund. Local Acts of 1911, page 198, Act No. 183 had a section 7 identical with section 7 of 1892 act. The last section of the 1911 act provided for the repeal of any law in conflict with its provisions. Sec. 7 being identical was then not repealed but evidently intended to become active in the place of Sec. 7 of the 1892 act. Local Acts of 1919 page 92, act 253 provided for the repeal of Sec. 7 of the 1892 act, thereby giving Clerks & Sheriffs full 100% of their F & F. Claims. Technically then the act of 1911 was not repealed and ostensibly now in operation. Upon the enactment of the Local Act of 1919 both Clerk & Sheriff began 100% claims against the F & F (Gen) Fund and have made such claims since.

"Mr. John Miller a Senator from Wilcox County in 1919 introduced the local Act of 1919, repealing Sec. 7 of the local act of 1892. Mr. John Miller is now a Circuit Judge and lives in Camden. He says it was his intention of the act of 1919 to repeal whatever law prevented the Clerk & Sheriff from receiving a full 100% of their legal F & F claims. Subsequent facts and conduct of Clerk & Sheriff in claiming 100% after the act of 1919 also indicate the intent.

"I would like to have your opinion to clarify this technical error indicating that the Sheriff & Clerk of Wilcox County are entitled to 100% of the F & F fees allowed by law."

Act No. 67, S. 6, approved December 12, 1892, Acts of Alabama, 1892-93, page 104, is an act to regulate the Fine and Forfeiture Fund of Wilcox County, etc. Act No. 183, S. 295, approved April 4, 1911, Local Acts, 1911, page 198, though having a considerably different title from that of Act No. 67, is an act with the same general purpose. Sections 1-8, inclusive, of Act No. 183 are strikingly similar in language to, and identical in legal effect with, Sections 1-8, inclusive of Act No. 67, and Section 9 of Act No. 183, its only remaining section, is identical with Section 11 of Act No. 67. The only difference in legal effect between Act No. 67 and Act No. 183 is that Sections 9 and 10 of Act No. 67 are omitted from Act No. 183. (These sections are not material to the instant inquiry.)

Section 7 of Act No. 67 reads as follows:

"Sec. 7. **Be it further enacted,** That the fees of the circuit clerk and sheriff of said county, in cases where the state failed to convict, or where a **nolle prosequi** is entered, or where an indictment is withdrawn and filed, shall be fifty (50) per centum of the fees allowed by law."

Section 7 of Act No. 183 differs from Section 7 of Act No. 67 only in that Section 7 of Act No. 183 does not contain a comma contained in Section 7 of Act No. 67, one of the verbs appears in the present tense instead of in the past tense, and a word is spelled differently. **The two sections are identical in legal effect.**

The first question presented is the effect of Section 7 of Act No. 183 on Section 7 of Act No. 67. If Section 7 of Act No. 183 repealed Section 7 of Act No. 67, then Act No. 253, S. 324, approved August 29, 1919, Local Acts, 1919, page 92, which purported to repeal Section 7 of Act No. 67, was abortive; whereas, if Section 7 of Act No. 183 affirmed and continued Section 7 of Act No. 67 in force, then Act No. 253 was effective to repeal the same. The rule of statutory construction to be here applied is stated as follows in the case of **Allgood v. Sloss-Sheffield Steel and Iron Co.**, 196 Ala. 500, 71 So 724:

> " 'The repeal and simultaneous reenactment of substantially the same statutory provisions is to be construed, not as implied repeal of the original statute, but as a continuation thereof.'—36 Cyc. 1084 (E); Endlich on Statutes, §490; Sutherland on Stat. Construction, §134; **Forbes v. Board of Health**, 27 Fla. 189, 9 South. 446, 26 Am. St. Sep. 63; **Brown v. Pinkerton,** 95 Minn. 153, 103 N. W. 897, 900, Ill. Am. St. Rep. 448; **Haspel v. O'Brien**, 218 Pa. 146, 67 Atl. 123, 11 Ann. Cas. 470, and note 472; **White etc., Co. v Harris**, 252 Ill. 361, 96 N. E. 857, Ann. Cas. 1912 D, 536."

As stated by Mr. Justice Somerville, the author of the opinion of the the court in that case, this principle "of statutory construction must be regarded as thoroughly well settled, both upon the soundest reasoning and the highest authority." See also the cases of **Board of Revenue v. Johnson**, 200 Ala. 533, 76 So. 859; **Tucker v. McLendon,** 210 Ala. 562, 98 So. 797; **American Standard Life Insurance Company v. State**, 226 Ala. 383, 147 So. 168, wherein **Allgood v. Sloss-Sheffied Steel & Iron Co.** is cited and/or quoted from.

This rule is stated as follows in 59 C. J. 926-27, Sections 528-29:

> "§528. **Reenactment—aa. In General.** The reenactment of a statute or of a provision of a statute, is not a repeal of such statute or provision; it is to be construed as simply the continuance of the old rule. * * * "

> "§529. bb. **Repeal and Simultaneous Reenactment.** The repeal and simultaneous reenactment of substantially the same statutory provisions is to be construed, not as an implied repeal of the original statute, but as an affirmance and continuance thereof."

(It is interesting to note that **Board of Revenue v. Johnson** is cited in one of the notes (2) to Section 528, and that **Allgood v. Sloss-Sheffield Steel & Iron Co.** and **Tucker v. McLendon** are cited in notes (8 and 11) to Section 529.)

When this rule of statutory construction is applied to the instant situation, it follows that Section 7 of Act No. 183 did not repeal Section 7 of Act No. 67, but rather that it affirmed and continued the same in force. Consequently, Act No. 253, which purported to repeal Section 7 of Act No. 67, was effective for that purpose, as said section was still in full force and effect at that time, having been affirmed and continued by Section 7 of Act No. 183, and the provisions of Section 7 of Act No. 67 (and the provisions of Section 7 of Act No. 183) ceased to exist as a part of the statutory law of this State

upon the approval of Act No. 253. Therefore, the limitation of fifty per centum on the fees of the Circuit Clerk and Sheriff of Wilcox County, in cases where the State failed to convict, or where a nolle prosequi is entered, or where an indictment is withdrawn and filed, contained in said Section 7 (and in Section 7 of Act No. 183) ceased to apply on and after August 29, 1919, the effective date of Act No. 253, as the statutory provision in which it was contained ceased to exist as a part of the statutory law of this State on that date.

The application of the above rule of statutory construction to the instant situation aids us in arriving at the intention of the lawmakers in enacting Act No. 253, which, obviously, was to do away with the fifty per centum limitation on the fees of the Circuit Clerk and Sheriff of Wilcox County, in cases where the State failed to convict, or where a nolle prosequi is entered, or where an indictment is withdrawn and filed, contained in Section 7 of Act No. 67 (and in Section 7 of Act No. 183); and, as observed by Mr. Justice Bouldin in the case of **Tucker v. McLendon**, "all * * * rules are merely in aid of the prime aim in all statutory construction—to find the intention of the lawmakers."

If the conclusion here reached needs further support, it is to be found in the administrative construction placed upon Act No. 253 and its effect, by those officials of Wilcox County charged with administering the same, as related in your letter of inquiry, which is the same as that here placed thereon.

The contemporaneous construction of a statute, the application or meaning of which is doubtful, by administrative officials charged with its enforcement, is entitled to great consideration, especially if it has prevailed for considerable time. See **State v. Tuscaloosa Building & Loan Association**, 230 Ala. 476, 161 So. 530; **Jones v. Johnson**, 240 Ala. 357, 199 So. 539.

At first blush it might appear that the instant situation is within the influence of the decision of the Supreme Court in the case of **State ex rel. Bates v. Baumhauer et al., Bates v. State ex rel. Baumhauer et al.**, 239 Ala. 476, 195 So. 869, but a careful perusal of the opinion of the court in that case shows that the situation there considered is clearly distinguishably from the instant situation.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 24, 1942.

Hon. M. E. Cannon, Treasurer,
Covington County,
Andalusia, Alabama.

Sheriffs — Covington County — Costs and Fees — Section 100, Title 11, Code of 1940.

1. County governing body may legally pay sheriff for removing prisoners to State Prison for safekeeping where jail of the county insecure when prisoner is insolvent or is acquitted. Where the prisoner is in such physical condition as to require the use of an ambulance, the cost of the ambulance may be borne by the County.

Opinion by Assistant Attorney General Mooneyham.

Dear Sir:

Your request for official opinion, bearing date of April 15, 1942, is as follows:

"The Sheriff of Covington County has made claim against Covington County Treasurer for the removal of prisoner from hospital in this County to Kilby Prison, Said prisoner having to be moved by an ambulance. I would appreciate it if you would let me have a ruling to clear up the following questions:

"1. Is it a legal payment out of the County Treasury to pay the Sheriff $3.00 for one day per diem in removal of said prisoner?

"2. Is it legal to reimburse the Sheriff $20.00 which he paid for ambulance service in transferring prisoner to Kilby Prison?

"The prisoner was moved under order of the Circuit Judge and I am enclosing a copy of this order for your information."

It must be taken as settled in this State that counties, being governmental agencies of the State, can only be made chargeable with and liable for such claims and demands as the law imposes on them, or for which it authorizes or empowers them to contract. This power may be derived either from an express authorization of the law, or by necessary implication.

The only statutory provision with which I am familiar that may authorize Covington County to pay your sheriff a per diem for his services in removing the prisoner, and to reimburse him for the cost of the ambulance used in transferring the prisoner from Covington County to Kilby Prison, is that part of Section 100 of Title 11, Code of 1940, hereinafter set out.

"For removing any prisoner in cases where there is no jail in the county in which the offense is committed, or the jail therein is insecure, to the jail of another county, and for returning him to the jail of the county from which he was removed or to court for trial, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners, while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be taxed against, and paid by such prisoner, on conviction, or, if he is insolvent, or is acquitted, by the county in which the offense was committed; but in no case shall the county to which such prisoner was removed be liable for such costs or fees."

In an opinion rendered by one of my predecessors on October 26, 1931, **Biennial Report of the Attorney General, 1930-32,** page 509, it is held that the above quoted provision (Section 3741, Code of 1923) has no application where the removal is to the State Penitentiary rather than to a jail of another county, and that, therefore, no fee is provided for such removal. That opinion distinguishes between a "penitentiary" and a "county jail."

I am cognizant of the fact that a "jail" and a "penitentiary" are entirely different institutions. However, it is my opinion that the meaning given the word "jail" as it is used in Section 100 of Title 11, supra, in the opinion of my predecessor heretofore referred to, is entirely too narrow and technical. I believe that the word "jail" as therein used, includes a state prison.

From a careful reading of your request for the opinion and the order of the Circuit Judge attached thereto, I understand the facts to be that there was a possibility of mob violence, and that both the hospital in which the prisoner was confined and the jail at Covington County were insecure.

Based on these facts, I am constrained to the conclusion that your governing body may legally pay the sheriff a per diem of $3.00 for each day while he is engaged in the removal of the said prisoner, as provided for in the above quoted part of Section 100 of Title 11, supra.

I am also of the opinion that the County may reimburse the said sheriff for the actual necessary traveling expenses of himself and the prisoner while on the trip, which, in my judgment, would include the cost of the ambulance in this particular case.

In holding that the County may legally make these payments, I am assuming that it has been determined that the prisoner is insolvent, or that he was acquitted.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 24, 1942.

Hon. T. M. Perry, President,
Marengo County Board of Revenue,
Linden, Alabama.

Electors — Poll Tax — Exemption on Account of Physical Disability — Proof of Disability in Prior Years —

The fact that an exemptioner does not make the necessary proof before the probate judge between October 1 and February 1 of any poll tax year does not preclude him from making such proof during said period in a subsequent poll tax year; and such proof of status, when made in a subsequent year, is effective to exempt the exemptioner from payment of poll tax in such prior year.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Your letter of June 30, 1942, in which you request an official opinion, is as follows:

"Will you please be so kind as to clear up the following matter for me?

"Tit. 51 Section 238, states that all persons who are exempt from payment of Poll Taxes for reasons of permanent and total disability should file their claim for exemption each and every year. There are a number of voters in my county who filed their claim ten or so years ago and were told by the Probate Judge that it would not be necessary for them to file each year, therefore they have not done so. Now what I want to know is what procedure they must pursue to enable them to be re-enstated. I have been unable to find any law whereby they could file a claim for each of these past years."

Section 238 of Title 51 of the Code of Alabama, 1940, insofar as here pertinent, provides:

"§238. Persons exempt in payment of poll tax.—The following persons shall be exempt from poll tax; All persons permanently and totally disabled from following any substantially gainful occupation with reasonable authority, and whose taxable property does not exceed five hundred dollars, provided that proof of such disability is made to the probate judge of the county in which such person resides between October the first and the following February the first. And the name of no such exempt person shall be placed on the list of qualified voters after the first day of February and before the first day of the next October. * * * "

The effect of the provision is that if, as of October 1, in any poll tax year, a person is permanently and totally disabled from following any sub-

stantially gainful occupation with reasonable regularity; and if, as of said date, his taxable property does not exceed five hundred dollars, he is entitled to the exemption from the payment of poll tax for that year. **Shepherd v. Sartain**, 185 Ala. 439, 64 So. 57.

However, in order to obtain the benefit of such exemption during that year and to be entitled to have his name placed on the list of qualified voters of the county for that year (if he is otherwise qualified as to registration, residence, etc.), he must make proof before the probate judge between October 1 and the following February 1 of the fact, as of October 1, of his physical disability and of the fact, as of October 1, of his ownership of taxable property not exceeding five hundred dollars in value. If he is, in fact, physically disabled as of October 1 of any given year to the extent provided in the statute, and if he, in fact, does not own, as of October 1 of that year, taxable property in excess of five hundred dollars in value, but he does not make proof thereof before the probate judge of his county between October 1 and the following February 1, then he is not entitled to have his name placed on the list of qualified electors for that year (assuming that he is qualified in all other respects); and he cannot have his name placed on said list, or the records corrected to show his exemption status, until October 1 of the next or a succeeding poll tax year and prior to February 1 of such next of succeeding poll tax year. Cf. Biennial Reports, Attorney General, 1926-28, page 523; 1930-32, page 844.

If a person who, because of his physical condition and the poverty of his estate as of October 1 in a given year, is entitled to the exemption from poll tax for that year, but does not make the necessary proof before the probate judge between October 1 and February 1 of that year, nevertheless the exemptioner does not lose his right of exemption for that year, provided he make proper proof in a subsequent year. In any subsequent poll tax year, at any time between October 1 and the following February 1, the exemptioner may make his proof as to his physical and financial status as of October 1 in any prior year; and if the proof so furnished reasonably satisfies the probate judge of the existence in said prior year of the facts which the statute requires, then the probate judge may, between October 1 and February 1 of the year in which the said proof is furnished, correct the poll tax records to show that the exemptioner was entitled to exemption from poll tax for such prior year, and the exemption from poll tax for said prior year is then as effective as if proof thereof had been made to the probate judge between October 1 and February 1 of the said prior poll tax year.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 27, 1942.

Hon. M. H. Caraway,
Treasurer, Barbour County,
Clayton, Alabama.

Where a jury is summoned and impaneled under Title 15, Section 428, Code of Alabama, 1940, in an inquisition of lunacy, each juror excused or challenged is entitled to his per diem, mileage and ferriage, although he is excused for any reason.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

Your letter of July 20, 1942, in which you request an official opinion, is as follows:

"I, as county treasurer and Clerk of the Board of Revenue, write you for an opinion on the following:

"An inquisition upon an alleged insane prisoner who was held for the slaying of his father was held and the Circuit Judge ordered the sheriff to summons twenty-four men from different sections of the county from which to select twelve jurors. The Circuit Clerk has issued certificates to all of these men allowing them three dollars per day and five cents per mile. So I desire to know if I can legally pay this mileage, and also if I can pay all the men summonsed or just the twelve who served?"

From the facts stated by you in your inquiry, I think it quite certain that the judge instituted the hearing or inquisition under the provisions of Title 15, Section 428, Code of Alabama, 1940, which section is as follows:

"§428. Inquisition upon alleged insane prisoner; further proceedings. —If any person in confinement, under indictment, or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by an order of any justice, appears to be insane, the judge of any court of record of the county where he is confined must institute a careful investigation, call a respectable physician and other credible witnesses, and, if he deems it necessary, may call a jury, and for that purpose he is empowered to compel attendance of witnesses and jurors; and if it be satisfactorily proved that the person is insane, the judge may discharge him from imprisonment and order his safe custody and removal to the Alabama state hospitals, where he must remain until restored to his right mind; and then, if the judge shall have so directed, the superintendent must inform the judge and sheriff, whereupon the person must be remanded to prison, and criminal proceedings be resumed, or he be otherwise discharged."

It can readily be seen from the above that it is not mandatory that the judge call a jury to determine the facts, but "may call a jury." The statute does not designate the number of jurors he may call, whether twelve or more, so this being true, I think it is left to the sound discretion of the judge instituting the investigation to fix the number of jurors to be called or summoned for such hearing, from which a venire of twelve is to be selected.

It is my opinion all jurors summoned to appear and attend on the date fixed for such hearing would be entitled to their per diem, mileage and ferriage, as provided by Title 11, Sections 98 and 99, Code of Alabama, 1940, even though their services were not required, being excused or challenged for any cause. **Chitty v. Tisdale**, 154 Ala. 246, 45 So. 587; Biennial Report of Attorney General, 1936-1938, page 503.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 27, 1942.

Hon. Frank M. Meigs,
County Bookkeeper,
Bibb County,
Centreville, Alabama.

Bibb County — Local Act — Court of County Commissioners — Mileage.

Members of Court of County Commissioners of Bibb County not entitled to mileage under Local Act No. 132 (General and Local Acts of Alabama, 1936-37, page 63) in addition to monthly salary.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for official opinion, bearing date of July 14, 1942, is as follows:

"Under local act number 132 Extra Session 1936-37 Bibb County is paying the Commissioners $50.00 per month, and they get per diem and mileage for the days they attend court.

"Please advise me under this act if they would be permitted to draw additional mileage for the days they are in their districts inspecting, supervising and building roads and bridges, using their own cars."

It is my opinion that your inquiry must be answered in the negative.

This act provides in clear and certain terms that the members of the Court of County Commissioners are to draw as compensation for their services in inspecting the work of maintenance, upkeep, and repairing the public roads of Bibb County, or for their services in supervising such work on the public roads and all necessary traveling expenses incurred by them in performing such services, the sum of $50.000 per month for each month so engaged. The compensation prescribed by this Act is in limitation of the compensation prescribed by the general law, and must be strictly construed.

The premises considered, it is my opinion that the members of the Court of County Commissioners of Bibb County are not entitled to mileage for the days they are in their districts inspecting, supervising and building roads and bridges in addition to their monthly salaries. It is my opinion that the salary of $50.00 per month prescribed by the Local Act, supra, is in lieu of per diem and mileage provided for under the general law for the performance of such services.

I express no opinion as to the constitutionality of the Act here under consideration.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 27, 1942.

Hon. P. C. Jenkins,
Sheriff, Wilcox County,
Camden, Alabama.

Costs and fees — Sheriffs — Removal of Prisoners —

1. Under the provisions of Section 100, Title 11, Code of 1940, Sheriff is entitled to the fees therein specified for removing a prisoner who is confined in a county other than that in which he is triable to the county in which the prisoner is triable.

2. Under facts stated, there is no fee allowed for the removal of prisoner from Camden to Kilby Prison.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for official opinion, bearing date of May 7, 1942, is as follows:

"A negro convict charged with grand larceny located at Camp Camden, killed another convict in Wilcox County and was carried to Kilby Prison by the warden of Camp Camden for safe keeping.

"The grand jury of Wilcox County indicted this negro for 1st degree murder and Judge Jno. Miller ordered me as Sheriff to deliver the said prisoner to Wilcox County for trial and he was sentenced to the Penitentiary for life and the Judge ordered me to deliver the prisoner back to Kilby prison.

"I did so and collected my expense from the Commissioners Court of Wilcox County after the Judge approved the bill.

"The State Examiners charged this expense back to me, as this was a felony and the county is not liable for removals in felony cases but this prisoner was already a State Prisoner.

"I would like to know where should I collect my expense for the removal."

In replying to your inquiry, your attention is called to the pertinent part of Section 100, Title 11, Code of 1940, which is as follows:

"§100. Sheriff's fees and allowances; sheriff to file application for fees, when — Sheriffs are entitled to the following fees and allowances in criminal cases — that is to say: * * * For removing any prisoner upon a change of venue granted in his case, or who is arrsted on a warrant issued by a justice of the peace, or on an indictment, and confined in a county other than that in which he is triable or arrested for contempt, or as a defaulting witness, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners, while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be paid by the state in case of felonies, and by the county when the offense committed is a misdemeanor, upon his sworn statement and account therefor, accompanied by a certificate of the clerk of the court in which the prisoner is, or will be, triable, that such fees have been reported to and docketed, or will be docketed by him. * * * "

From the facts stated in the above request, it appears that this prisoner was confined in a county other than Wilcox County where he was triable under an indictment for murder. The above quoted Code section provides a fee for the removal of a prisoner confined in a county other than that in which he is triable of $3.00 for the sheriff and $2.00 for his guard, together with the actual necessary traveling expenses of himself, guard, and prisoner. Based upon this section, you are advised that in my opinion the cost bill enclosed by you, which is dated October 18, 1940, when the same has been properly certified by the clerk, as provided in Section 100, supra, is properly payable by the State of Alabama.

I find no fee provided for the sheriff for removing the prisoner from the county jail in Camden to Kilby Prison. It is true that this removal was made under the order of the Circuit Judge, and it was duty to obey this order. It is likewise true that public officials must point to specific statutory authority before any fee or commission is collectible. I do not find any fee for this service. You are therefore advised that in my opinion the cost bill enclosed by you dated November 1, 1940, and which includes the expenses of removing the prisoner from Camden to Kilby Prison is not payable by the County nor by the State of Alabama.

I am enclosing herewith the file in this matter which you sent me under date of May 26, 1942.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 28, 1942.

Hon. S. G. Johnson,
Judge of Probate,
Lamar County,
Vernon, Alabama.

Code 1940, Title 51, Section 618 — Deed Filing Tax —

Deed executed under a decree of court for the purpose of foreclosing liens on property therein described is subject to the deed filing tax.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for official opinion bearing date of July 16, 1942, is as follows:

"We enclose attached hereto an instrument filed with me for record.

"They claim same should be exempted from state deed tax.

"The amount involved, however, is too much for me to take a chance on.

"It is self explanatory and we will thank you to please examine and advise whether or not it should be taxed as a deed or not."

The instrument enclosed purports to convey certain tracts of land therein definitely described, in Lamar County, Alabama, to J. C. deHoll, as Receiver of the Fayette and Lamar County Drainage District No. 1, and to divest legal title in said land out of the former owners, and to vest such title in said grantee, pursuant to a decree of the United States District Court for the Northern District of Alabama, whereby said land was ordered to be sold for the purpose of foreclosing liens thereon created under Act No. 167, H-136, approved March 4, 1915 (General Acts 1915, page 167.)

The consideration for such conveyance is shown to be "the amount of the liens against each of said parcels of land as provided in said decree, dated April 17, 1941."

I find nothing in the statute, (Code 1940, Title 51, Section 618), nor is any suggestion offered, in support of the claim that said instrument "should be exempted from state deed tax." Inasmuch as it is a conveyance of real estate and does not come within any exemption from the deed filing tax, so far as I am advised, I am of opinion that it is subject to said tax.

Nothing in the face of the instrument indicates or shows the value of the lands so conveyed, so that under the former opinions of this office it becomes your duty in fixing the amount of tax to be imposed for recording said instrument to ascertain, as best you may, the value of the land so conveyed, at the time of conveyance. **Quarterly Report, Attorney General,** Volume XIV, page 183.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 28, 1942.

Hon. B. P. Singleton,
Chief Examiner of Accounts,
Capitol.

County Officers—

1. A county treasurer elected under Code 1940, Title 12, Section 30, falls under the provisions of Code 1940, Title 41, Section 211, and cannot be employed by a county governing body to act as its clerk or bookkeeper.

2. Section 211, Title 41 of the Code has no application to an individual selected by the county governing body to act as treasurer under the provisions of Code 1940, Title 12, Section 52, and, therefore, such a person may serve as clerk or bookkeeper for a county governing body.

Opinion by the Attorney General.

Dear Sir:

Your letter of June 17, 1942, in which you request an official opinion, is as follows:

"Please refer to the opinion of your office on page 108, Beinnial Report for 1936-1938, dealing with a County Treasurer, or Treasurer appointed in lieu of a County Depository, acting as Clerk of the Board of Revenue or Court of County Commissioners, and to Section 211 of Title 41, Code of Alabama, 1940, and advise me in answer to the following:

"1. Can a county treasurer, elected under the provisions of Section 30, Title 12, 1940 Code of Alabama, accept appointment and act as the clerk or bookkeeper of a county board of revenue or court of county commissioners?

"2. Can a person appointed county treasurer under the provisions of Section 52, Title 12, 1940 Code of Alabama accept appointment and act as the Clerk or bookkeeper of a county board of revenue or court of county commissioners?"

In order to give a comprehensive answer to your questions, it is well to examine and give consideration to the law providing for the custody of the public funds of the counties of this state.

Two general methods have been provided, based on the population of the counties. Code 1940, Title 12, Sections 30-42, deal with and apply to counties having a population of more than fifty-six thousand according to the 1930 Federal Census. The Code 1940, Title 12, Sections 43-53, deal entirely with counties having a population of not more than fifty-six thousand according to the same Federal Census. The methods of selection of a custodian of the county funds are mandatory under these statutory provisions.

Under Title 12, Sections 30-42, the custodian must be elected by the qualified electors of the county and his term of office is for a period of four years and his duties are described in detail. Section 41 of this series of sections provides that the provisions of said Sections 30-42 do not apply where there is a local law on the subject. This Section 41 explains the provisions of Section 30, where it is said:

" *** and not otherwise having a county depository or other custodian of its funds in lieu of a county treasurer, *** ."

The county treasurer elected under Section 30, supra is a county official made so by the will of the electorate of the county. This is so well known that I will not stop to cite authorities.

Title 12, Section 43, abolishes the office of county treasurer and it and the sections following establish a new and different system for the custody

of county funds in all counties having a population of not more than fifty-six thousand according to the named Federal Census. Here again the statute is limited to counties not controlled by local act. These sections now under review set up a new and different system designated by Article 2, under which they appear, as "DEPOSITORY IN LIEU OF TREASURER." The custodian is named by the county governing body. Section 44 herein requires the county governing body at named periods to select as a custodian of the county funds an incorporated state or national bank and provides that the custodian selected shall be the one that offers the highest rate of interest to the county on daily balances of the bank deposits. This system so set up makes it the duty of the county to select from the named banks a custodian of the funds. This Section 44 clearly contemplates that the county governing body shall offer bids to the banks named and let the contract to the highest bidder. The courts hold that the county governing body is vested with the authority to decline acceptance of undesirable bids and to reject all of them. In this event, Title 12, Section 52, above referred to, comes into play.

This section evidently was enacted to take care of a situation where the county governing body failed to reach terms with any of the named banks. In fact, this is the plain language of the section. In such a contingency, the section provides that:

> " *** then such boards may designate some **individual** who may act as **treasurer** of such county under such terms and conditions as may be fixed by said courts of county commissioners or boards of revenue." (Italics ours)

It clearly appears that the party selected is an individual and must enter into such terms and conditions as the board may require. It is necessary to bear in mind that under said Sections 43-52 there is no county treasurer and the county governing body cannot create a county treasurer. They select a county depository. Such depositories are not county officers but they are contract agencies.

My construction of all of these sections under Title 12, supra, is based upon the plain provisions of the sections when construed together and also upon the decisions of our Supreme Court dealing with and construing these sections. The following cases are sufficient: **Covington County v. O'Neal,** 239 Ala. 322, 195 So. 334; **Jenkins v. State ex rel. Watson,** 219 Ala. 554, 123 So. 21; **Compton v. Marengo County Bank,** 203 Ala. 129, 82 So. 159.

Keeping the foregoing announced principles in mind, I take up the concrete principles presented by your questions.

Your questions are based on Code 1940, Title 41, Section 211. This section forbids by name certain county officials, including county treasurers, entering into any contracts with counties for work or services for the counties. These provisions were clearly intended to apply to any county officer and the county treasurer falls within the name inhibitions. The section closes with the following language:

" *** nor shall it be construed to prevent **the treasurer in lieu of a county depository** from being employed as clerk to the court of county commissioners, board of revenue, county commission or other governing body of the county." (Italics ours)

The italicized provision in this quotation undoubtedly has reference to the individual who may be selected by the county governing board under Title 12, Section 52 of the Code above discussed and specifically takes such a one from under its forbidden provision. It certainly did not mean to exempt from its provisions county treasurers specifically named in the first part of the section. It must be noted that Section 52 is dealing with a situation in counties having no county treasurer and under circumstances where the county board has been unable to select a satisfactory county depository from the class named in the statute. In such case, this section authorizes the selection of an individual—not an incorporated entity—who is authorized to "act as treasurer." The statute does not say county treasurer. Such statement did not fit into the system for counties where there was not, and could not be, a county treasurer. The use of the word "treasurer" in this section, as well as the same word in Section 211, means no more than a county custodian or keeper of the county funds, that is to say, the individual selected by the board acts as the keeper or custodian of the funds. Section 211, Title 41, supra, exempts such an individual from its provisions and refers to him as "the treasurer in lieu of a county depository." Here again the statute does not say "county treasurer" and we are not justified in supplying the word "county." To do so would destroy the purpose of the act to prevent the county treasurer and other named officers from contracting with the county. It would be senseless to forbid the county treasurer and others from entering into contracts with the county and then add that it would not apply to county treasurers.

From the foregoing, it must follow that a county treasurer under Title 12, Sections 30-42 of the Code falls within the provisions of Title 41, Section 211 of the Code and cannot accept appointment and act as clerk or bookkeeper of a county commission or other like governing body.

It is my opinion, however, that a treasurer appointed in lieu of a county depository under the terms of Section 52, Title 12, Code of 1940, may serve as clerk of the court of county commissioners, board of revenue, county commission or other governing body of the county.

This conclusion is based on that part of Section 211 of Title 41 heretofore quoted. This language was contained in an amendment to Section 5024, Code of 1923, now Section 21, Title 41, by an act approved March 2, 1937, which was only a few weeks after this office rendered the opinion referred to by you in your inquiry, wherein it was held that a treasurer appointed in lieu of a county depository could not hold the office of clerk of the governing body of a county. Obviously, the amendment was brought about as a result of the opinion of this office.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 28, 1942.

Hon. M. E. Marlette, Clerk,
Circuit Court, Lowndes County,
Hayneville, Alabama.

Statutes—Lowndes County—

The codification of "The County Financial Control Act" (Code 1940, Title 12, Sections 73-91) did not repeal Section 5 of Local Act No. 111, H. 82, approved December 17, 1894 (Acts 1894-1895, page 186).

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your letter of June 23, 1942, in which you request an official opinion, is as follows:

"I was rendered an opinion July 28, 1936, Vol. 4 page 96 to the effect that the Board of Revenue could only pay $150.00 per year for services as Clerk of the Board of Revenue, the same being the amount as provided in Sec. 5 of the Lowndes County Local Law, (Acts of 1894-5 page 186).

"You held in an opinion Sept. 17th, 1936 Vol. 4 page 181 that the Macon County Local Act was not disturbed by the General Budget Act of 1935 page 803 due to Sec. 19 of the General Act.

"You also held in an opinion dated May 9th, 1941 Vol. 23 page 131 that the Marengo County Local Board of Revenue Law was not disturbed by the General Budget Act of 1935 due to Sec. 19 of the General Acts.

"The General County 'Financial Control' Law, Chapter 6 Title 12, Sec. 73 to 90 does not contain a section exempting local laws similar to Section 19. Nor is Jefferson, Mobile and Montgomery exempted under the New Law as they were by Sec. 21 of the 1935 Acts.

"The Compensation as fixed by the 1894-5 Local Law may have been reasonable at the time but is now entirely out of line and inadequate, due to the large amount of work required and the responsibility now attached to the office. Our Board is unanimously in this opinion and would set the compensation at a reasonable sum if Section 80 Title 12 of the 1940 Code prevails instead of Sec. 5 of our Local Law, and I would like for you to render me an opinion at your earliest convenience on the following questions:

"1st. Does Sec. 80 Title 12 of the 1940 Code repeal Sec. 5 of the 1894-5 page 186 Local Law?

"2nd. If Sec. 80 of the General Law repeals Sec. 5 of the Local Law does your opinion to Judge Poyner Vol. 8 page 246 still stand?"

In my opinion, your first inquiry should be answered in the negative.

The act commonly known and referred to as "The County Financial Control Act" (General Acts, 1935, page 803) has been codified and now is covered by Sections 73-91 of Title 12, Code 1940. A careful study of these sections of the Code reveals, however, that Section 19 of the original act was omitted. This section was as follows:

"Section 19. All laws and parts of laws, except local acts applying to single counties, conflicting with any of the provisions of this Act be and they hereby are repealed."

Your first inquiry presents the question as to whether or not the omission of Section 19, supra, from the provisions of "The County Financial Control Act," as they appear in the 1940 Code, supra, has the effect of repealing Section 5 of the Local Act to which you refer. (Act No. 111, H. 82, approved December 17, 1894 (Acts, 1894-95, page 186)). I think not.

I base my conclusion upon the reasoning set forth in an opinion of this office to the Board of Revenue of Barbour County, Eufaula, Alabama, dated March 24, 1942 (Quarterly Report of Attorney General, Volume XXVI, page 156), wherein it was said:

"In answer to this question, I wish to call your attention to the fact that as a rule a General Act does not repeal a Local Act unless there is a manifest intention of the Legislature expressed in the General Act that it shall have this effect. See Shepherd et al. v. Clements, 224 Ala. 1, 141 So. 255; Quarterly Report of Attorney General, Volume XIX, page 165.

"I do not find anything in the Code of 1940 which leads me to believe that it was the intention of the Legislature in adopting it that it should repeal your Local Act. On the contrary, it is my judgment that the Legislature expressly provided that such was not to be the effect. I call your attention to Section 9, Title 1 of the 1940 Code, the pertinent part of which reads as follows:

'Local, private, or special statutes, and those public laws not of general and permanent nature, and those relating to the swamp and overflowed lands, and those relating to the public debt, and appropriations, and any act submitting an amendment to the Constitution, and any act to be effective upon the adoption of such an amendment to the Constitution, are not repealed by this Code.'

"In addition to this, it must be remembered that repeal by implication is not favored in this jurisdiction and that the Legislature evidently had such in mind when it included in the 1940 Code the above quoted excerpt. This excerpt from the 1940 Code, in my opinion, had the effect

of safeguarding Local Acts like yours from repeal by implication. See Reid v. Wallace, 27 Ala. App. 199, 168 So. 900; Quarterly Report of Attorney General, Volume XX, page 21; Quarterly Report of Attorney General, Volume VII, pages 196 and 203; and Quarterly Report of Attorney General, Volume V, page 45."

It is therefore my opinion, in view of the above authorities, that the 1940 Code did not repeal Section 5 of Local Act No. 111, supra.

In view of the foregoing conclusion, it is not necessary to answer your second inquiry.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Hon. B. P. Singleton,
Chief Examiner of Accounts,
Department of Finance,
Montgomery, Alabama.

Lowndes County—Local Act—Clerical Assistance.

Local Act of Lowndes County, Alabama (Local Act No. 316, page 205, Local Acts of Alabama 1939) providing clerical assistance to Judge of Probate does not violate Section 96, or subsection 24 of Section 104, Article IV, Constitution 1901.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for official opinion bearing date of June 29, 1942, is as follows:

"Please refer to Local Act No. 316, page 205, Local Acts of 1939, and advise me in answer to the following question:

"Is this monthly allowance of the Judge of Probate of Lowndes County constitutional?

"Please find attached copy of a letter to me from one of the examiners regarding this matter and a copy of one of the claims made by the Judge of Probate against the County under authority of the Local Act in question."

The Local Act under consideration is found in the Local Acts of Alabama, 1939, at page 205, and is as follows:

"No. 316) (H. 719—Robinson (of Lowndes)

"An Act

"To authorize the employment by the Board of Revenue of Lowndes County, Alabama, of clerical assistance to the Judge of Probate of said Lowndes County, Alabama, and to provide for the compensation of such employee.

"Be it enacted by the Legislature of Alabama:

"Section 1. The Board of Revenue of Lowndes County, Alabama, is authorized to employ one person to perform clerical services for the Judge of Probate of said Lowndes County, Alabama, and such Board of Revenue is authorized to pay the one person so employed the sum of Eight Hundred ($800.00) per annum to be paid in monthly installments.

"Section 2. That this Act shall go into effect immediately upon its approval by the Governor.

"Approved September 1, 1939."

In your request you ask whether or not this monthly allowance to the Judges of Probate of Lowndes County is constitutional.

A careful reading of the Local Act, supra, reveals this is not an allowance to the judge of probate. The Act specifically provides that the Board of Revenue of Lowndes County is authorized to employ a person as clerical assistant to the judge of probate, and pay to the person so employed the sum of $800.00 per annum.

Section 96 of Article IV of the Constitution of 1901 provides as follows:

"The legislature shall not enact any law not applicable to all the counties in the State, regulating costs and charges of courts, or fees, commissions or allowances of public officers.

Section 104, subsection 24, of the Constitution of 1901 provides:

"The legislature shall not pass a special, private or local law in any of the following cases: *** (24) creating, increasing or decreasing fees, percentages or allowances of public officers; *** "

Since the compensation provided by the Local Act, supra, is not an allowance to the judge of probate, said Act does not violate Section 96 or subsection 24 of Section 104 of the Constitution of 1901.

The Local Act, supra, was designed to provide clerical assistance to the Judge of Probate of Lowndes County. The salary of such assistant is fixed at $800.00 per annum. The judge of probate is not directly enriched by virtue of the Local Act. I do not understand that the judge of probate receives said sum himself, but that it is used to pay a clerical assistant in his office.

It may be argued that this Local Act is violative of the above enumerated sections of our Constitution upon the theory that the provision for such clerical assistant results to the financial advantage of the judge of probate, though indirectly, and thereby increases his compensation during his term of office. But such argument wholly fails in the light of the following cases of our Supreme Court (**Commissioners Court of Winston County v. Haney,** 218 Ala. 166, 118 So. 237, 238; **State ex rel Day v. Bowles,** 217 Ala. 458, 116 So. 662; **Court of County Commissioners v. Lightner,** 225 Ala. 22, 141 So. 908), wherein local acts were considered, analogous to the Act here, and sustained as against constitutional objections interposed. This Act neither regulates, creates, increases, nor decreases the fees, commissions, percentages or allowances of the Judge of Probate of Lowndes County.

The premises considered, it is my opinion that the Local Act of Lowndes County, Alabama (Local Acts of Alabama, 1939, page 205) was validly enacted and does not offend the provisions of the Constitution here considered.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Miss Loula Dunn, Commissioner,
Department of Public Welfare,
Montgomery, Alabama.

County Department of Public Welfare—Authority to contract for the performance of public welfare functions—

A county department of public welfare, with the approval of the State Department of Public Welfare, is legally authorized to contract with a federal public welfare agency for the performance of public welfare functions within the county.

Opinion by Assistant Attorney General Rowe.

Dear Madam:

Your request for official opinion bearing date of July 21, 1942, is as follows:

"I would appreciate your formal opinion as to whether a county department of public welfare, with the approval of the State Department of Public Welfare, can enter into a contract with the Federal Works Agency to maintain and operate a children's day care facility within the county with funds allocated to the county department by the said Federal Works Agency.

"In order to receive the benefits of Federal funds, under the provisions of the Community Facilities Appropriation Act, for the operation and maintenance of day care centers for children of women employed on essential war industries, one of our county departments of public welfare is desirous of filing application with the Federal Works Agency. The State Department of Public Welfare will approve the action of the county department, if the county department can legally enter into the operation and maintenance contract. Inasmuch as the application requires information on the financial and contractual status of the agency making application, the Federal Works Agency has advised the county department of public welfare to secure an opinion from you as to the contractual status of the county department of public welfare.

"Day care centers offer facilities for the care of children during the necessary absence of mothers from the home. During the present war emergency, with the employment of women necessarily accelerated, the State and county departments of public welfare have been concerned with the problems resulting for children. In such connection is Section 8, sub-section 6 and 7 of Title 49, pertinent?"

In my opinion, a county department of public welfare, **with the approval of the State Department of Public Welfare,** can contract with the Federal Works Agency for the said county department to maintain and operate a day-care facility for children within the county, with funds made available to the county department by the said Federal Works Agency.

The pertinent provisions of Title 49 of the Code, relating to your inquiry, are quoted hereinbelow.

Section 8, in part, provides:

"§ 8. Duties, powers, and responsibilities of department.—The aim of the state department shall be the promotion of a unified development of welfare activities and agencies of the state and of the local government so that each agency and each governmental institution shall function as an integral part of a general system. In order to carry out effectively these aims it shall be the duty and responsibility of the state department to: (1) Administer or supervise all forms of public assistance including general home relief, outdoor and indoor care for persons in need of assistance, and old age pensions, also including those duties that have to do primarily with the determination of need and authorization of relief. *** (7) Designate county departments as its agents under its rules and regulations to perform any of the state department's functions. *** "

Section 9 provides:

"§ 9. County departments.—There shall be in each county a county department of public welfare which shall operate under a county board of public welfare and shall consist of the county director of public welfare and such employees as the county board and state board deem necessary for the efficient performance of the welfare services of the county."

Section 12, in part provides:

"§12. Duties and responsibilities of county director.—It shall be the duty of the county director to meet regularly with the county board which shall formulate general policies, rules and regulations. It shall also be the duty of the county director to advise the county board in regard to the activities of the county department. All administrative and executive duties and responsibilities of the county department not inconsistent with the rules and regulations of the state board shall be performed by the county director, subject to the approval of the county board. These duties and responsibilities shall include relief to persons in need of assistance; the performance of family welfare services, the care of dependent, neglected, delinquent and otherwise handicapped children, **and such other child-care activities** as shall be delegated to it by the state department of public welfare; *** " (Emphasis supplied)

As we understand the facts set out in your request, the function relating to the operation and maintenance of a day-care facility for children within the county in question has been, or will be, delegated to the said county department; or, the State Department has, or will, approve the exercise of said function by the said county department.

This office has heretofore held that a county department of public welfare is an agency of the county. Quarterly Report, Attorney General, Vol. VIII, page 263—Biennial Report, Attorney General, 1936-38, page 383. Cf. Quarterly Reports, Attorney General, Vol. III, page 97, Vol. VIII, page 105; Biennial Report, Attorney General, 1936-38, page 448.

In Tuscaloosa County v. Walker, 235 Ala. 293, 178 So. 543, the Supreme Court said:

"Likewise, the state department of public welfare is recognized by the lawmaking body as meeting an important need, and given a wide field of labor. In section 8 of the Public Welfare Act, General Acts 1935, p. 762, 765, it is stated that the 'aim of the State Department shall be the promotion of a unified development of the Welfare activities and agencies of the State and of the local governments, so that each agency and each governmental institution shall function as an integral part of a general system.'

"In detail manner in this section the powers and duties of the state department of public welfare are set forth, and the state department is authorized to designate county departments as its agents, and in section 5 of the act the state department is given authority to decide with reference to 'the use of grants-in-aid, to County Departments,' and in Section

8 the state department is made the agent of the federal government in 'welfare matters of mutual concern,' and the administration of federal funds.

"And our Legislature has made provision as to the matter of 'matching' federal funds for old age pensions, General Acts, Sp. Sess. 1936-37, p. 158, aid to dependent children families, Gen. Acts 1935, p. 1061, and to the blind, Gen. Acts, Sp. Sess. 1936-37, p. 101. For appropriations, see General Acts, Sp. Sess. 1936-37, p. 158, also pages 103, 203 and 40. Id."

On the basis of this decision, and of the opinions of this office cited supra, it seems clear that the county department of public welfare is an agency of the county which, with the approval of the State Department of Public Welfare, legally can contract with a Federal Agency for the maintenance and operation of a day-care center for children within the county.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Hon. S. E. Boozer,
Judge of Probate,
Calhoun County,
Anniston, Alabama.

Code 1940, Title 51, §§ 618, 619—Deed Filing Tax—Mortgage Filing Tax—Contract for Sale of Real Estate—

Contract whereby vendor agrees to sell real estate and accepts part of the purchase money in cash and takes notes for balance of purchase money, and agrees upon payment of all purchase money to convey, or to convey and accept a mortgage securing balance of purchase money, when a certain amount has been paid, is subject to the deed filing tax as to amount of cash paid upon execution of the agreement, and to mortgage filing tax as to the unpaid purchase money.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

I have your request for official opinion bearing date of July 24, 1942, which is as follows:

"Enclosed is herewith photostatic copy of an agreement between J. F. King and wife, and T. M. Dennis whereby Mr. King agrees to convey certain property to Mr. Dennis when certain stipulations have been met. This agreement is being offered for record in this office. Please advise if it is taxable under Title 51, Section 618, of the Code of 1940."

The document, of which you have enclosed a photostat, is an agreement executed the 18th July, 1942, by J. F. King and wife, and T. M. Dennis, and is in legal effect a contract purporting to convey a right, title, or interest in real property. It is entitled, therefore, to the privilege of record accorded to such documents by Code 1940, Title 47, Section 95.

Said document evidences an agreement by King and wife to sell and convey to Dennis certain real property in Calhoun County, Alabama, for the sum of $3500, of which $500 has been paid, the balance of purchase money amounting to $3,000 being represented by ninety-six notes payable to King, the first maturing September 1, 1942, and one each month thereafter.

The vendee is entitled to anticipate payment of said unpaid purchase money notes at any time, and also to demand a deed to the property when the aggregate amount of payments of purchase money, including the $500 cash payment, equals one thousand dollars, in which event a mortgage will be executed by him to secure the remaining unpaid purchase money.

It is further agreed that when the entire purchase money is paid King and wife will execute a deed to Dennis.

There is also provision whereby upon default in payment of any of the purchase money notes King may, at his option, terminate the contract and all purchase money previously paid will be considered a reasonable rent for the property and liquidated damages up to that time.

The agreement also contains covenants, usual in real estate mortgages, that the vendee will keep the property insured, with loss payable to the vendor as his interest may appear, and will assess and pay taxes thereon for the tax year beginning October 1, 1942, and succeeding years.

Thus it will be seen that in legal effect this instrument (1) conveys an equitable interest in the property and (2) operates as a security for the unpaid purchase money, amounting at this time to $3,000.

I am of the opinion, therefore, that when offered for record it is subject to the deed filing tax (Code 1940, Title 51, Section 618) as to the $500, the value of the equitable interest presently conveyed, and also to the mortgage filing tax (Code 1940, Title 51, Section 619) as to the $3,000 unpaid purchase money thereby secured. Quarterly Report of Attorney General, Volume XVII, page 124.

As to the mortgage filing tax, it is expressly provided in Section 619, supra, that it "shall be paid upon all contracts for the sale of real or personal

property, whether the same be in the nature of a conditional sale, or a bond for title, and no such contract shall be received for record until such tax shall have been paid." The instrument in question is such a conditional sale contract.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Hon. Thos. W. Jones,
Judge of Probate,
Madison County,
Huntsville, Alabama.

Code 1940, Tit. 51, § 619—Mortgage Filing Tax—

Mortgage executed to a state bank, and/or Reconstruction Finance Corporation is subject to the mortgage filing tax where it appears that Reconstruction Finance Corporation and the bank have executed an agreement whereby the former upon demand of the latter agrees to purchase a participation in the mortgage and the loan secured thereby, and also that Reconstruction Finance Corporation has an option to purchase such participation from the bank.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for official opinion bearing date of July 11, 1942, is as follows:

"Madison Heights Homes Incorporated

To Mortgage

Commerce Union Bank and/or

Reconstruction Finance Corporation

$600,000.00 May 15, 1942.

"The above captioned mortgage and participation agreement between the mortgagees is herewith enclosed with request for your opinion as to whether the same is subject to mortgage tax under Title 51 Section 619.

Also enclosed copies of letters to Mr. George J. Gale, Agency Counsel Reconstruction Finance Corporation June 19, 1940 Nashville, Tennessee and letter from Mortgage Commerce Union Bank to me of date July 19, 1942."

In the mortgage, of which you submit a copy for examination, the mortgagee is named as "Commerce Union Bank, a Tennessee Corporation, with its principal office and place of business in Nashville, Tennessee, and/or the Reconstruction Finance Corporation, a Governmental Agency chartered under the Acts of Congress of the United States with its principal office in Washington, D. C., (hereinafter called the 'Mortgagee')."

Whether this is such a patent ambiguity as to render the mortgage void I will not undertake to determine. As I see it, the mortgagee intended to be named is either said Commerce Union Bank and Reconstruction Finance Corporation or one or the other of them which ever one it may be, it is impossible to determine without resort to extrinsic evidence.

In the most favorable light from the mortgagee's standpoint the ambiguity may be said to be latent. In that event extrinsic evidence is admissible to clear up the ambiguity. **Jones on Evidence,** Civil Cases, (4th Ed.), Vol. 2, page 902, Section 472.

If the ambiguity is latent it is cured upon reference to the printed copy of the Participation Agreement (for deferred participation by RFC in loans made by bank), which is enclosed with the mortgage.

The Participation Agreement in effect provides that RFC will upon demand from the bank purchase a two-thirds interest in the mortgage and loan thereby secured, and also that RFC may upon five days written notice, at its option, purchase such participation in said loans. Thus it is clear enough that the mortgage enclosed and the loan secured thereby are really transactions or property of the Bank itself and that the RFC's interest therein is contingent and executory, so to speak. In other words, so far as appears on the face of the mortgage itself, either by itself or in connection with the Participation Agreement, RFC may or may not in the future become the owner of some interest in the loan and mortgage.

I am of opinion, therefore, that regarding the matter most favorably to the mortgagee this mortgage is subject to the mortgage filing tax imposed by Code 1940, Title 51, Section 619. Inasmuch as in the most favorable light it is the Bank's mortgage.

It further appears that the mortgagee bank is a foreign corporation, organized and existing in the State of Tennessee. It does not appear that the mortgagee bank is a national bank, and as such subject to restricted state taxation as a federal agency or instrumentality. No statute or authority has been brought to my attention in support of the proposition advanced in the letter enclosed from the bank to yourself, that its membership in the Federal Reserve System makes it a federal agency, exempt from state taxation except as permitted by federal law. Nor have I been able to find any statute or

authority to that effect. I am of opinion, therefore, that the mortgage enclosed, executed 15th May, 1942 by Madison Heights Homes, Inc., to the Commerce Union Bank, and/or Reconstruction Finance Corporation is on the same footing as an ordinary mortgage and that the real mortgagee is not exempt from payment of his mortgage filing tax.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Hon. Chester Walker,
Judge of Probate,
Tuscaloosa County,
Tuscaloosa, Alabama.

Code 1940, Tit. 41, § 618—Deed Filing Tax—Trust Indenture—

1. An instrument whereby title to real and personal property is conveyed to a national bank in trust for the benefit of the grantor upon certain conditions, is subject to the deed filing tax, although the grantor under such instrument has the entire beneficial interest in the property so conveyed.

2. The fact that conveyance is made to a national bank exercising fiduciary powers pursuant to the act of Congress (U. S. C. A., Title 12, Section 248, Subd. K) is immaterial.

3. Recital in such instrument of conveyance to the bank as trustee of a sum of money does not subject the value so recited to be conveyed to the deed filing tax.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for official opinion bearing date of July 7, 1942, is as follows:

"Am inclosing copy of Trust Agreement filed by the First National Bank of Tuskaloosa for recording also an opinion of Mr. Gordon Madison, Attorney for Miss Foster. As you will note Mr. Madison is of the opinion there should be no deed tax due on this instrument. I am of the opinion that we should charge a deed tax on both real estate and personal property including the $20,000.00 in cash money."

By the instrument enclosed Miss Foster has conveyed legal title in certain real and personal property to the bank in trust for her benefit, upon various conditions therein recited but unnecessary to be stated in this connection.

In former opinions of this office, it is held that conveyances by executor, pursuant to testamentary discretion, to a trustee for beneficiaries under his will are subject to the deed filing tax. **Quarterly Report, Attorney General,** Vol. VI, page 106; Vol. VIII, page 132. Likewise it is held that conveyances by the trustee to the beneficiary are subject to such tax. **Quarterly Report, Attorney General,** Vol. 1, page 117; Vol. XVI, page 251.

It is also held that conveyances by one corporation in course of liquidation or dissolution or upon merger to another corporation holding the entire capital stock of the grantor corporation are subject to the deed filing tax, **Quarterly Report, Attorney General,** Vol. XX, page 206; Vol. XVIII, page 150; **Biennial Report of Attorney General,** 1926-28, page 42.

These opinions are based upon **Hawkins, Probate Judge v. Pure Oil Company,** 232 Ala. 660, 169 So. 307, wherein it will be seen that the question of taxability vel non depends upon whether or not the instrument offered for record does in fact convey or transfer any right, title or interest in property. The fact that an equitable title or beneficial interest in the property may by such conveyance be created or arise in the grantor is immaterial, under the doctrine of the Pure Oil case.

The fact that in the present instance the conveyance is made to a national bank, exercising the powers of a fiduciary under an act of Congress (U. S. C. A., Title 12, Section 248, Subd. K), does not, in my opinion, affect the question, inasmuch as by exercise of such powers a national bank subjects itself to state law applicable to any other fiduciary, and is not, therefore, in the exercise of such fiduciary power regarded as a federal instrumentality. **Fidelity and Deposit Company v. Deposit Guaranty Bank and Trust Company,** 164 Miss. 286, 144 So. 700; **Breedlove v. Freudenstein,** 89 F 2d. 324, 112 A. L. R. 777; Cert. Den. 302 U. S. 701, 82 L. ed. 541.

The intent of the federal statute (U. S. C. A., Title 12, Section 548) restricting the power of state taxation as to national banks was to prevent discrimination as between such banks and state banks and trust companies. **Tradesmen's National Bank of Oklahoma v. Oklahoma Tax Commission,** 309 U. S. 560, 84 L. ed. 947; **Bedford v. Colorado National Bank,** 310 U. S. 40, 84 L. ed. 1067.

I am of opinion, therefore, that the trust indenture, of which you have enclosed a copy, executed the 2nd of July, 1942, by Lida Scarborough Foster and the First National Bank of Tuskaloosa, is subject to the deed filing tax imposed by Code 1940, Title 61, Section 618.

I do not think, however, that the deed filing tax should be imposed as to "the sum of $22,000" which the indenture of trust purports to "grant, bargain, sell" etc. to the trustee.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Mrs. Edwina Mitchell,
Associate Member,
Board of Pardons and Paroles,
Montgomery, Alabama.

State Board of Pardons and Paroles—Remission of Fines in cases of confessed judgments and remission of Forfeitures—Powers to Remit Costs Therein—

1. When a defendant in a misdemeanor case confesses judgment with sufficient sureties, in lieu of payment of fine and costs, the Board of Pardons and Paroles is without authority to remit the costs of the conviction, which costs are a part of the obligation of the sureties in the confession of judgment, on the application of the defendant and/or his sureties.

2. The Board of Pardons and Paroles has no authority to remit the costs incident to the forfeiture of a bail bond, where bail bond is finally forfeited for failure of the defendant to appear at court, and the defendant and/or his sureties makes application to said Board for remission of the forfeiture.

Opinion by Assistant Attorney General Rowe.

Dear Madam:

Your request for official opinion under date of June 22, 1942, which has been qualified and limited by your letter of July 7, 1942, is (as qualified) as follows:

" *** we (the Board of Pardons and Paroles, we interpolate) should like to know whether or not we have the power to remit costs, on due application made to the Board of Pardons and Paroles, in cases of confessed judgments and in cases of forfeiture of appearance bonds."

Your request involves two questions, viz:

(1) Has the Board of Pardons and Paroles, upon application of the defendant or his sureties, the right to remit costs of conviction in a case where defendant is required to pay fine and costs of the cause upon conviction for misdemeanor, and in lieu thereof confesses judgment, with good and sufficient sureties, therefor? and

(2) Has the Board of Pardons and Paroles, on due application therefor, the right to remit costs incurred in the forfeiture proceedings, in a case in which a defendant gives a bail bond, with good and sufficient sureties, for appearance upon a criminal charge, and the said bond is forfeited for the failure of the defendant to appear, and judgment nisi is rendered, with scire facias thereon, which judgment nisi is subsequently made final, and the

amount of the forfeiture is adjudged by the court, and judgment rendered against the principal (defendant) and his sureties, either or all, together with costs of the forfeiture?

In my opinion, your first question must be answered in the negative.

Sections 339 and 340 of Title 15 of the Code of 1940 provide:

"§ 339. Confession of judgment by defendant for fine and costs.—When a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs."

"§ 340. Execution issues as in civil cases.—Execution may issue for the fine and costs, or any portion thereof remaining unpaid, as in civil cases."

You will note that Section 340 provides that execution may issue for the **fine and costs.**

The authority of the Board of Pardons and Paroles, insofar as here pertinent, is contained in Section 16 of Title 42 of the Code of 1940, which provides in part:

" *** the Board shall have authority and power *** to remit fines and forfeitures."

It will be noted that nothing is said in the statute with reference to remission of costs of conviction.

If a defendant is convicted of a misdemeanor and does not pay the fine and the costs of conviction but, in lieu thereof, confesses judgment with good and sufficient sureties, the sureties assume a civil liability,—a mere promise to pay the amount of the fine assessed and the costs taxed against the defendant in connection with his conviction. **State for the use of Montgomery County v. Allen,** 71 Ala. 543.

Under the provisions of Section 16 of Title 42, supra, the State Board of Pardons and Paroles has the authority, after the confession of judgment, to remit the fine; but the statute invests it with no authority to remit the costs.

In my opinion, your second inquiry must also be answered in the negative.

The provisions for the proceedings for the forfeiture of bail bonds are contained in Sections 212 et seq. of Title 15 of the Code of 1940.

Section 212 provides that such undertaking of bail is forfeited by the failure of the defendant to appear at court at the time and place provided.

Section 213 provides that, in the event of such failure to appear, a conditional judgment must be rendered by the court in favor of the State, for the use of the proper county, against the parties to the undertaking for the sum thereon expressed.

Section 214 provides for a scire facias or notice of judgment nisi to be directed to the defendant and his sureties.

Section 215 provides for personal service of the same by the sheriff.

Section 216 provides that if the notice is not served, aliases may issue; and that return of two such notices "not found" by the proper officer is equivalent to personal service.

Section 217 provides:

> "§ 217. Conditional judgment set aside, reduced or made absolute.—If the defendants appear and show sufficient cause for the default, to be determined by the court, the conditional judgment must be set aside; but if the excuse if not sufficient, or if they fail to appear, the judgment must be made absolute for the entire sum expressed in the undertaking, or any portion thereof, according to the circumstances."

Section 218, relating to excuse for default, provides:

> "§ 218. Excuses for default heard at any time, and allowed without cost.—Excuses for default must be heard by the court on application, at any time when not engaged in other business; **and when a conditional judgment is set aside, no cost must be imposed on the defendants.**" (Emphasis supplied)

Proceedings for the forfeiture of a bail bond are civil proceedings; and costs attach in such proceedings against the unsuccessful party therein in the same manner as is provided by law for the taxation of costs in ordinary civil suits. **State for the use of Coosa County v. Parker,** 83 Ala. 269. Cf. **Gresham v. State,** 12 Ala. App. 502, 67 So. 624.

The "forfeiture" which Section 16 of Title 42, supra, authorizes the Board of Pardons and Paroles to remit, is the amount which the court adjudges must be forfeited to the State for the use of the county by reason of the breach of the bail bond, occasioned by the failure of the defendant to appear at court, as said bail bond provides for. Cf. **State ex rel French v. Stone,** 224 Ala. 234, 139 So. 328. The judgment of the court which makes the forfeiture final also includes, as a matter of course, the costs of the proceedings to forfeit the bail bond. But the "costs" of said proceedings are no part of the "forfeiture."

This view is emphasized by the underscored portion of Section 218, supra, "and when a conditional judgment is set aside, **no cost** must be imposed on the defendants."

This provision relates to and governs cases in which the **judgment** is set aside by the court in which it was rendered. If the legislature had intended that no costs should be payable by the defendants in the judgment of forfeiture, in the event the **forfeiture** was remitted by the Board of Pardons and Paroles, I have no doubt that it would have expressed that intention as clearly as it did in the excerpt, quoted supra, from Section 218, relating to costs in cases where the judgment of forfeiture is set aside by the court. And if the legislature had intended to invest the Board of Pardons and Paroles with discretion as to whether or not costs of the forfeiture proceedings should be paid in cases where the forfeiture is remitted by the said board, I have no doubt that same clear expression of that intention would have been included in Section 16 of Title 42, supra.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 29, 1942.

Hon. Frank N. Julian,
Superintendent of Insurance,
Department of Commerce,
Capitol.

Mutual Aid, Benefit or Industrial Companies or Associations—Hospitalization—Contract for—Industrial Corporations—

1. Under the provisions of Section 259, Title 28, Code of 1940, an industrial corporation may enter into an agreement or contract with a hospital, whereby the hospital contracts to provide hospitalization for the employees of such industrial corporation.

2. Industrial corporations under the provisions of Section 259, supra, may contract with medical doctors and surgeons for medical and surgical attention to the employees of such corporation.

3. A doctor or surgeon may not contract with an industrial corporation to provide hospitalization for the employees of such industrial corporation.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your letter of July 16, 1942, in which you request an official opinion, is as follows:

"Re: Section 259, Title 28, Code of Alabama.

"With reference to the conference that I had recently with Dr. Jackson of Birmingham, and Mr. Maurice Bishop, at which conference we requested your presence, I am constrained to ask you for a ruling or clarification of the above mentioned Section.

"In the outset, may I say that during the conference I pointed out to Dr. Jackson that in my opinion the law provided that agreements by and between industrial corporations and medical doctors and surgeons for the purpose of giving medical and surgical attention to the employees of an industrial corporation were permissible under the laws.

"Further, I advised Dr. Jackson that industrial corporations and hospitals could contract for dental, medical, and surgical attention for the employees of such industrial corporations.

"My inquiry, therefore, is as follows:

"1. Does the second paragraph of Section 259 permit industrial corporations and regularly recognized hospitals to enter into agreements or contracts whereby the industrial corporations will provide for hospitalization and the necessary incidental treatments?

"2. May an industrial corporation contract with medical doctors and surgeons for medical and surgical attention to the employees of such corporation?

"3. Can a **doctor** or **surgeon** contract with an industrial corporation to provide **hospitalization** of its employees?"

Before proceeding to a categorical answer to your questions, I deem it advisable to hereinbelow set out the pertinent part of Section 259, Title 28, Code of 1940. This section, as pertinent, is as follows:

" *** The following are hereby declared to be mutual aid, benefit and industrial insurance companies or associations: All companies or associations, whether voluntary or incorporated under the laws of this state or any other state, and all individuals, firms or co-partnerships doing in this state a business of issuing certificates or policies to or agreements with their members or policy holders to provide dental, medical or surgical attention, to provide hospital service or attention of any kind to such members or policy holders or to others dependent upon such member or policy holder or beneficiary designated by such member or policy holder, which service, attention or aid promised is provided from donations, fees, dues or assessments, are hereby declared to be mutual aid, benefit or industrial companies or associations. **Provided, however, that nothing herein contained shall prevent agreements by and between industrial corporations and hospitals to provide for dental, medical and surgical attention for the employees of such industrial corporations; and provided further that nothing herein contained shall prevent the em-**

ployment of medical doctors and surgeons for the purpose of giving medical and surgical attention to the employees of such corporation." (Emphasis supplied)

My answer to your first inquiry is in the affirmative, as it affirmatively appears from the foregoing excerpt from Section 259, supra, that an industrial corporation may enter into a contract with a recognized hospital to furnish hospitalization for the employees of such industrial corporation.

My answer to your second inquiry is likewise in the affirmative, as it affirmatively appears from the above quoted excerpt that medical doctors and surgeons may enter into contracts with industrial corporations whereby the doctor or surgeon contracts to supply medical and surgical attention to the employees of such industrial corporation.

My answer to your third inquiry is in the negative.

This question involves a consideration as to whether or not the contract to be entered into by and between the industrial corporation and the doctor or surgeon is a "contract of insurance."

In this regard, your attention is directed to the case of **Commissioner of Internal Revenue v. W. H. Luquire Burial Association Company, Inc., et al,** 102 Fed. 2d. 89. In this case a contract of insurance is defined as follows:

"A contract of insurance has been defined as 'an agreement, express or implied, by which one party, for a consideration, promises to pay money, or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which the other party has an insurable interest.' Section 8341, Code of Alabama, 1923; Cooley's Briefs on Insurance, 2d Ed., Vol. 1, p. 6; 14 R. C. L. Sec. 2, p. 839; Supreme Commandery of Knights of Golden Rule v. Ainsworth, 71 Ala. 436, 443, 46 Am. Rep. 332.

" 'The contract evidenced by the certificate has all the elements of a life insurance contract. It is an agreement to perform a service which can become obligatory only on the death of the certificate holder. *** Here there is an "insurer," an "insured," a "premium," and a "beneficiary," and we think the contract nothing else than a plain, ordinary insurance contract.' **State v. Globe Casket & Undertaking Co.,** 82 Wash. 124, 143 P. 878, 879, L. R. A. 1915B, 976."

Applying the above definition of insurance contracts to the present situation, I likewise find that there is an "insurer," the doctor or surgeon; an "insured," the industrial corporation; a "premium," the contract price entered into by and between the surgeon or doctor and the industrial corporation; and a "beneficiary," the employees of the industrial corporation.

Based upon this case, it is my judgment that if a surgeon or medical doctor entered into a contract with an industrial corporation whereby the doctor or surgeon agreed for a stipulated compensation to purchase or con-

tract with another for hospitalization for the employees of the industrial corporation, then such an agreement would constitute a contract of insurance.

Section 259, supra, provides in legal effect that any person (not within the exceptions therein enumerated) who enters into a contract of insurance to furnish hospitalization to a definite group of persons is a mutual aid, benefit or industrial company or association. This being true, it is my opinion that the doctor or medical surgeon here considered would have to comply with the requirements of law pertaining to mutual aid, benefit or industrial companies or associations.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 30, 1942.

Hon. Robert Locke,
Sheriff, Choctaw County,
Butler, Alabama.

Choctaw County—Fine and Forfeiture Fund—Special Fund created by Local Act, 1932, page 122.

1. Officers' scrip payable from the Fine and Forfeiture Fund, **as such,** acceptable in payment of fines and forfeitures due Choctaw County.

2. State witness tickets in cases in which the State failed to convict, payable from the Fine and Forfeiture Fund, **as such,** are acceptable in payment of fines and forfeitures due Choctaw County.

3. Scrip of officers and tickets of state witnesses payable from the Fine and Forfeiture Fund of Choctaw County, **as such,** are payable by the County Treasurer in the order of their registration.

4. Scrip of state witnesses, payable from Special Fund, which were presented within six months after approval of Act No. 344, Local Acts, Extra Session, 1932, payable in order of their registration.

5. Scrip of state witnesses, payable from Special Fund, presented for registration more than six months after date of approval of Act No. 344, Local Acts, Extra Session, 1932, are payable in order of presentment, without regard to priority of registration.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Your letter of April 28, 1942, in which you request an official opinion, is as follows:

"Please give me your opinion as to the following questions relative to the Fine and Forfeiture Fund of Choctaw County, Alabama:

"1. Is it legal for the County, or its duly authorized officer or officers, to accept officer's script in the payment of fines?

"2. Are state witness tickets, marked—'The State failed to convict,' acceptable in the payment of fines?

"3. Does the local law regulating the fine and forfeiture fund of Choctaw County require or specify that script is to be paid according to the date or dates of the registration of same?

"I understand that the Legislature of Alabama passed local acts with reference to said fine and forfeiture fund in 1931 and 1933, and that the local act controlling the above question or questions was passed between the year 1880 and 1890, and was passed jointly with an act pertaining to Conecuh County and possibly other counties."

Answering your first inquiry, it is my opinion that officers' scrip may be accepted in payment of fines due Choctaw County, after they have been duly registered, as provided by Act No. 336 H. 405, General and Local Acts of Alabama, 1886-87, page 759, et. seq.

As pertinent, that Act provides:

"Section 1. Be it enacted by the General Assembly of Alabama, That the county treasurers of Choctaw, Clarke and Covington counties shall keep a registry of all claims against the fine and forfeiture fund of their respective counties, showing the date of claim, the amount, when and how it accrued, and the date of registration, and no claim against said fund shall be received or paid until the same shall have been registered, and all claims shall be paid in the order of registration, except as otherwise provided in this act.

"Section 3. Be it further enacted, That all officers' claims or fees payable out of the fine and forfeiture funds of said counties shall be itemized and certified by the several officers and examined and approved, in writing, by the judge of the court in which said claims or fees arose, before the same can be registered as provided by the first section of this act.

"Section 4. Be it further enacted, That State witness tickets, and solicitors, sheriffs and clerks' claims, payable out of the fine and for-

feiture fund, shall, after registration, be receivable in payment of any fine or forfeiture at their face value, and when such ticket or officers' claim is received or paid into the county treasury, the county treasurer shall mark on his registry of said claim that the same is paid, and the date of payment; but no officers' claims shall be received by installments or part payment, unless the same shall have been presented to the court of county commissioners and warrants therefor, in fractional parts, have been duly issued by such court, and such warrants registered, under the provisions of section one of this act; *** "

So that, under the provisions of the 1886-87 Act, quoted supra, if officers' claims and fees, duly itemized and certified by the several officers, and examined and approved in writing by the judge of the court in which said claims or fees arose, are duly registered with the county treasurer, then same are receivable in payment of any fine and forfeiture due Choctaw County at their face value.

Your attention is directed to the limitation contained in Section 4, supra, that "no officers' claims shall be received by installments or part payment, unless the same shall have been presented to the court of county commissioners and warrants therefor, in fractional parts, have been duly issued by such court, and such warrants duly registered, under the provisions of section one of this act."

This provision patently is to distinctly express the legislative intention that the authority who receives the scrip in payment of the fine or forfeiture due the county is not required to receive registered officers' claims and fees in payment thereof, in an amount in excess of the amount of the fine or forfeiture, for which the same is tendered as payment.

Answering your second inquiry, Section 4 of the 1886-87 Act, supra, is applicable to make witness tickets of state witnesses, after registration thereof, receivable in payment of any fine and forfeiture due the county at their face value, in a like manner as officers' claims so registered are receivable.

Although the Local Act, supra, does not specifically provide that witness tickets in cases in which the State fails to convict, are acceptable in payment of fines, this provision is supplied by the General Law, Title 11, Section 83 of the Code of 1940, which provides in part:

"§ 83. *** (b) in all trials in the circuit court, or county court, or court of like jurisdiction—except justice of peace court and courts in lieu of justice of peace courts whose jurisdiction in criminal cases is limited to the jurisdiction of justice of peace courts, **where the state fails to convict,** *** the state's witnesses shall be paid out of the fine and forfeiture fund *** "

So that, under the general law, the State's witnesses in cases in which the State fails to convict, are payable out of the fine and forfeiture fund; and under the local law applicable to Choctaw County, supra, such State witness tickets which are payable out of the fine and forfeiture fund, after registration, are acceptable in the payment of fines and forfeitures.

Up to this point in this opinion, we have dealt only with the Fine and Forfeiture Fund of Choctaw County, **as such**; and the conclusions hereinabove announced are not applicable to the special fund which was dealt with by Act No. 625 H. 1130, Local Acts, 1931, page 280, and Act No. 344 H. 672, Local Acts, Extra Session, 1932, page 122.

Your third inquiry must, for the purpose of answering the same, be divided into two questions:

(a) Does the Local Law regulating the Fine and Forfeiture Fund of Choctaw County require or specify that scrip is to be paid to the holders thereof out of the Fine and Forfeiture Fund of Choctaw County, **as such,** according to the date or dates of the registration of the same?

(b) Does the Local Law regulating the Fine and Forfeiture Fund of Choctaw County require or specify that scrip is to be paid to the holders thereof out of the special fund dealt with in Act No. 625, supra, and Act No. 344, supra, according to the date or dates of the registration of the same?

Answering subdivision (a), as above stated, it is my opinion that under the provisions of Local Act No. 336, Acts of 1886-87, supra, dealing with the find and forfeiture fund, **as such,** in Section 1, it is specifically provided that "all claims shall be paid in the order of their registration *** "

Answering subdivision (b), supra, Sections 3 and 4 of Act No. 344, Extra Session, 1932, supra, relating to said special fund, provide as follows:

> "Section 3. The Treasurer, or other custodian of the funds of Choctaw County, Alabama, shall upon the receipt of the funds provided for in Section 1 of this Act, divide the same into two allotments. In one allotment he shall place one thousand dollars ($1,000.00) and in the other fifteen hundred dollars ($1,500.00). The fifteen hundred dollar sum he shall use exclusively for the payment of the registered witness tickets described by this Act, which may be issued after its passage, and the one thousand dollar sum he shall use for the exclusive payment of registered witness tickets described by this Act which have been issued before its passage."

> "Section 4. All witness tickets, the payments of which are provided for by this Act, shall be paid out of their respective funds in their order of priority of registration, but the Treasurer, or other custodian of the funds of Choctaw County, Alabama, shall not hold in reserve money to pay tickets which shall not have been presented to him for payment within six months (6) after the passage of this Act, but nothing in this Act shall be construed as to invalidate such tickets, and the same shall be paid when presented for payment, if and when the funds are available for payment of them."

So that, under the provisions of Sections 3 and 4, supra, registered witness tickets, payable out of the special fund, which were presented within six months after November 9, 1932, the approval date of the Act, were payable out of the County Treasury in the order of their registration and pre-

sentment. But as to such tickets presented more than six months after November 9, 1932, the approval date of the Act, there is no provision of priority by reason of registration; and as to such tickets, the Treasurer, if in funds, is authorized to pay the same upon presentment, without regard to priority of registration.

In arriving at the conclusions hereinabove announced, I have taken into consideration Act No. 625 H. 1130, approved July 30, 1931, Local Acts 1931 page 280.

I have not applied the provisions of this Act to any of your questions, for the reason that, as recited in Section 10 of Act No. 344, Local Acts, 1932, supra, the said 1931 Local Act was declared unconstitutional by the Circuit Court of Choctaw County. A reference to the records of the appellate courts of Alabama indicates that no appeal was ever taken from the judgment of the Circuit Court of Choctaw County, Alabama, declaring said 1931 Local Act unconstitutional. The opinion rendered on November 2, 1937 to Hon. Henry Martin, **Quarterly Report of the Attorney General,** Volume IX, page 64, is overruled inasmuch as the conclusion therein reached is predicated on the 1931 Local Act, supra, which has been declared unconstitutional.

Some of your inquiries are answered by reference to the Local Act of 1886-87, and some of them are answered by reference to the Local Act of 1932, for the reason that there is no conflict between the provisions of the 1886-87 Act and the 1932 Act, so that each has a separate field of operation in its own particular sphere.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

July 30, 1942.

Hon. Bradley G. Brown,
License Inspector,
Jefferson County,
Birmingham, Alabama.

In action to recover a license or privilege tax, judgment acquitting defendant upon criminal charge for failing to procure proper license, is not "res judicata," and hence the acquittal in the criminal case is not a bar to the civil action.

Opinion by Assistant Attorney General Lurie.

Dear Sir:

Your letter of July 20, 1942, in which you request an official opinion, is as follows:

"It is my understanding that in the operation of this office when a person fails or refuses to take out the proper license, we have two remedies; criminal prosecution or civil action.

"Recently in several cases on persons who have failed to procure their license, we have elected to proceed criminally; only to have our cases thrown out of court by Judge H. B. Abernathy.

"So that you might better understand the position taken by this office and the evidence in the respective cases, I am attaching hereto a copy of my letter to the County Commission, under date of June 24th. Inasmuch as there is considerable revenue the State and County is entitled to in these cases, which Judge Abernathy has seen fit to dispose of without making them procure the license, I am desirous of knowing whether or not I can proceed civilly when I have failed criminally. There isn't one iota of doubt in my mind but that these licenses can be collected with very little trouble by bringing civil action in the Intermediate Civil Court of Birmingham. With your permission to do so I would like to request the Solicitor of Jefferson County to represent me in civil action against these defendants and to do so as soon as possible."

It is definitely established in this jurisdiction that the acquittal of a defendant on a criminal charge is not a bar to the enforcement of a civil right by the state against the same defendant based upon the facts which constituted such criminal charge. **State ex rel. Knight, Attorney General, v. DeGraffenreid,** 226 Ala. 169, 146 So. 531; **Roden & Son, v. State,** 3 So. (2d) 420.

In the case of **Roden & Son v. State,** supra, a question very similar to the one with which you are confronted was dealt with by the Court of Appeals. Roden & Son had been tried and acquitted upon a criminal charge of engaging in or carrying on a business without the license prescribed by law. This office brought a civil suit to recover the amount of license alleged to be due and Roden & Son, through counsel, raised the question that the civil suit was barred by virtue of the acquittal in the criminal prosecution. Both the trial court and the appellate court held, however, that the civil suit could be maintained, and recovery was had.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 3, 1942.

Hon. William A. Conrad, Clerk,
Circuit Court, Mobile County,
Mobile, Alabama.

Costs—With Reference to Public Officers—

1. Costs are not taxable against a public officer of a county suing or being sued in his official capacity in matters in which there is a bona fide dispute as to his official duties, though he loses in the contention.

2. In such cases, he is acting to protect the public interest of the county.

3. If the execution in such case runs against the officer in his official capacity, his personal property is not subject to levy thereunder.

4. The property of the county is not subject to such levy.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your letter of June 5, 1942, in which you request an official opinion, is as follows:

"In re: No. 1566—State of Alabama, ex rel William J. O'Conner -vs- George E. Stone, as Treasurer of Mobile County, Alabama.

"The Court of Appeals affirmed the judgment rendered by the Circuit Court of Mobile County in favor of the above named relator and against above named defendant; and in the certificate of affirmance the following appears:

"'and it was further considered that the appellant (defendant) pay the costs accruing on said appeal in this court and in the court below.'

"Now, therefore, I respectfully request your Honor's official opinion on the following questions, viz:—

"1.—Is George E. Stone, personally, liable for said costs?

"2.—Is the County of Mobile liable for said costs?"

The courts of the country are not in harmony but our Supreme Court is committed to the doctrine that where a public officer sues or is sued in his

official capacity in a matter in which there is a bona fide dispute as to his official duties, he is not taxable with the costs, though he may lose in the contention. **State ex rel. Holcombe, Sheriff, v. Stone, County Treasurer,** 233 Ala. 243, 245, 171 So. 366; 46 C. J. 1047 (Section 335); 14 Am. Jur. 24, Section 37; 5 Standard Enc. of Procedure 825.

The theory underlying the principles announced by the authorities is that the officer is acting to protect the public interests, in this case, the county. In the present case, the execution should run against the officer in his official capacity but no levy can be made on his personal property.

It may be added that he may seek protection for himself in attempting to legally perform his official duties. The general rule is that only parties to the suit or record or other proceeding are entitled to costs **or are liable for costs** in civil cases. 5 Standard Enc. of Procedure pp. 797, 981; 20 C. J. S. 351, Section 107; **Jones v. Brooks, Administrator,** 30 Ala. 588; **Garrison v. Burden,** 40 Ala. 513, 516.

Parties merely beneficially interested and who are not parties to the record cannot be adjudged liable for costs. 5 Standard Enc. of Procedure, pp. 797B and 798.

We have statutes authorizing suits to be brought in the name of the party having a real beneficial interest (Code 1940, Title 7, Sections 126 and 127) but these provisions are not applicable to the character of suits here under review. From the foregoing authorities, the Court of Appeals in this case had no authority to tax the costs against Stone, individually, nor against Mobile County.

In my opinion, it had no authority to tax the costs against Stone, as County Treasurer of Mobile County, but it did and no motion was made to retax the costs nor was any application made for rehearing and, of course, no certiorari of the Supreme Court could issue. Under the judgment of the Court of Appeals, which runs for costs against Stone, as Treasurer of Mobile County, your duty is to issue an execution against Stone, as such County Treasurer, but no levy can be made on the property of Stone nor on any funds or property in his custody belonging to Mobile County. Such property is that of the county and not subject to the execution.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 4, 1942.

Hon. R. P. Williams,
Sheriff, Barbour County,
Clayton, Alabama.

Fees of Sheriffs—Lunatics—Hearings or Proceedings—

Fees of Sheriff are payable under Title 11, Section 34, Code of 1940, where the proceedings are in relation to persons of unsound mind.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

Your letter of July 29, 1942, in which you request an official opinion, is as follows:

"As you probably know from different sources there was recently held in Barbour County, at Clayton, a sanity hearing under Title 15, Section 428, Code of Alabama for 1940, for one Huey R. Lee, Jr., who was and is being held in jail here on a charge of murdering his father.

"The question now arises as to how and from what source I will collect my fees for summoning jurors, witnesses, etc. Will you please advise me at your earliest convenience regarding this?"

I call your attention to Title 11, Section 34, Code 1940 (Section 7287, Code 1923), which section sets out the schedule of fees allowed sheriffs. Included in this list of fees is the following:

"Services in relation to persons of unsound mind, the same fees as are allowed for similar services in other cases, to be paid out of the county treasury, if such persons have no estate."

I call your attention to an opinion rendered January 22, 1941, to Hon. B. P. Singleton, Chief Examiner of Accounts (Quarterly Report of Attorney General, Vol. XXII, page 41), which opinion holds that under the above quoted provision, the sheriff's fees are paid from the county treasury, if such person has no estate. I am enclosing a copy of this opinion.

I realize that the proceedings dealt with in the opinion of January 22, 1941, supra, were before the probate judge under the authority of another statutory provision. However, the quoted part of Title 11, Section 34, supra, is general in its nature and is not limited to any particular type of insanity hearing.

It is my opinion, therefore, that whenever the sanity of any person is being investigated in accordance with the provisions of any statute, the

sheriff is paid for his services in the same amount as he is paid for the performance of similar services in other cases. Payment is to be made out of the county treasury, in the event the person alleged to be insane has no estate. It is my opinion that before the county can pay such costs, an execution against the alleged insane person must have been returned "No property found."

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 5, 1942.

Hon. J. W. Sharpton, President,
Etowah County Board of Revenue,
Gadsden, Alabama.

Etowah County—Board of Revenue—Hiring and Firing of Office Force—

1. President of Board has the right to hire those individuals of the office force procured by virtue of Title 12, Section 80 of Code 1940. Employment of clerk done by virtue of Title 23, Section 43 of Code 1940 is by action of the Board itself.

2. The right to hire or employ carries the right to fire or discharge.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your request for official opinion, bearing date of July 11, 1942, is as follows:

"Will you please give me an official opinion as to whether or not I, as President of the Board of Revenue for Etowah County, have the sole authority to hire and fire the office force for our office.

"As you know, I am in charge of the office and responsible for the keeping of the books and other transactions for Etowah County."

The present Board of Revenue of Etowah County, Alabama, was created and operates by authority of Act No. 267, H. 905, approved August 11, 1927 (Local Acts, 1927, page 187) as amended by Act No. 305, S. 417, approved September 8, 1939 (Local Acts, 1939, page 193). The said act as amended,

supra, provides, among other things, for a President of the said Board and four associate members, but makes no provisions for the employment, either by the President or the Board itself, of a clerk. It also contains the following provision:

> "Section 5. All general laws which now or may hereafter regulate or apply to the courts of county commissioners, boards of revenue, or to associate members of such bodies, shall regulate and apply respectively to the board of revenue of Etowah County and to the associate members of said board, and all general laws which now or may hereafter apply to the probate judge as principal judge of the court of county commissioners shall apply to the president of the board of revenue of Etowah County; *** "

Looking to the general law, I find that the authority for Courts of County Commissioners, Boards of Revenue, or like county governing bodies, to employ a clerk or clerks is found in Chapter 6 of Title 12, Section 80, and in Title 23, Section 43 of the 1940 Code. Section 80, Title 12, supra, is the codification of Section 8½ of what was commonly known as the "County Financial Control Act" and by virtue of the same, **the judge of probate or chairman of the county board is authorized to hire or employ whatever help** is needed to carry out the provisions of said act. Biennial Report of Attorney General, 1936-38, page 374.

Title 23, Section 43, supra, authorizes the employment of a clerk by the Courts of County Commissioners, Boards of Revenue, or like county governing bodies, but such employment is limited to duties concerning roads and bridges. Biennial Report of Attorney General, 1928-30, page 977; Biennial Report of Attorney General, 1930-32, page 602, 667; Biennial Report of Attorney General, 1936-38, page 108; and Quarterly Report of Attorney General, Volume XXV, page 154. It is my judgment, however, that the employment of a clerk under this provision is done by the action of the board itself.

Therefore, answering your specific inquiry, it is my opinion that you, as President of the Board of Revenue of Etowah County, have the right to hire those individuals of the office force which are procured by virtue of Chapter 6 of Title 12, Section 80, supra, and that the employment done by virtue of Title 23, Section 43, supra, is by action of the board itself. I deem it advisable to point out that in my opinion the right to "hire" or "employ" carries the right to "fire" or "discharge."

The holding in this opinion to the effect that Etowah County may employ clerical assistants under the provisions of Section 80, supra, so as to carry out the provisions of the so-called "County Financial Control Act" is not in conflict with the following opinions: Opinion to Hon. M. E. Marlette, Clerk, Circuit Court, Lowndes County, Hayneville, Alabama, under date of July 28, 1942; Opinion to Hon. T. M. Perry, President, Marengo County Board of Revenue, Linden, Alabama, (Quarterly Report of Attorney General, Vol.

XXIII, page 131). This for the reason that in Etowah County the local act does not make provision for clerical assistants, and therefore, is not in conflict with said section.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 5, 1942.

Hon. M. W. Forman,
Judge of Probate,
St. Clair County,
Pell City, Alabama.

St. Clair County—Court of County Commissioners—Probate Clerk cannot act as Clerk for—

1. Court of County Commissioners not authorized by Section 5 of Local Act (Local Acts, 1907, page 89) to employ clerk.

2. Court of County Commissioners of St. Clair County, under general law, authorized to employ clerk, but such employment is limited to duties concerning roads and bridges.

3. Clerk of Probate Office at Pell City cannot act as clerk for Court of County Commissioners of St. Clair County.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your letter of June 2, 1942, in which you request an official opinion, is as follows:

"St. Clair County has two courthouses under a local act of the legislature, and the Court of County Commissioners is required to be held at the Pell City Courthouse each quarter under the local act for St. Clair County. The Court is required to keep minutes, records, and transact such business as set out in the local act, and in addition thereto handle the preparation, filing of claims, etc.

"Is the Commissioners Court authorized to employ a clerk at the Pell City Office, there being a clerk of the Commissioners Court at the main county seat at Ashville?

"Is there any provision that would prevent the clerk in the Probate Office at Pell City from being appointed and named as clerk of the Commissioners Court at Pell City, in the event you hold that the Commissioners Court is authorized to employ such clerk?"

The local act to which you refer in your letter as providing for the holding of regular, special and adjourned terms of the Commissioners Court of St. Clair County at Pell City is found in Local Acts of Alabama, 1907, at page 89. The pertinent section of said act, for the purpose of answering your first inquiry, is as follows:

"Section 5. That it shall be the duty of the probate judge of said county to appoint and maintain a clerk at Pell City who shall, in the absence of the probate judge, have charge, and control of said records, and the person so appointed may perform ministerial acts pertaining to said court of county commissioners in the same manner and to the same extent as such judge could do in person, and for the acts of such clerk the probate judge of said county shall be liable on his official bond."

It will be noted that the above quoted section provides that it is the duty of the Probate Judge of St. Clair County "to appoint and maintain" a clerk for the Court of County Commissioners at Pell City, but makes no provision for his compensation. Furthermore, a search of the Local Acts for St. Clair County fails to disclose any provision of law whereby the compensation of such clerk is fixed, or provision made for the payment thereof from any county funds. Therefore, funds of St. Clair County cannot be used to compensate the clerk provided for in Section 5, supra. This conclusion is based on the well established principle of law which provides in substance that one who accepts public office, takes it cum onere, and can receive only such salary or compensation as is authorized by law.

Torbert v. Hale County, 131 Ala. 143, 30 So. 453;

State ex rel. Pollard v. Brewer, 59 Ala. 130;

McElderry v. Abercrombie, 213 Ala. 289, 104 So. 671;

Cabler v. Mobile County, 230 Ala. 118, 159 So. 692.

Under the general law, the authority for the Court of County Commissioners, Board of Revenue, or like county governing body, to employ a clerk or clerks is found in Chapter 6 of Title 12, Section 80, and in Title 23, Section 43 of the 1940 Code. Section 80, Title 12, supra, is the codification of Section 8½ of what was commonly known as the "County Financial Control Act", and by virtue of the same, the judge of probate or chairman of the county board is authorized to hire or employ whatever help is needed to carry out the provisions of the said act. Biennial Report of Attorney General, 1936-38, page 374. This office has heretofore held, however, that provisions in local acts which applied to single counties were not affected by provisions of the "County Financial Control Act" which were in conflict therewith (Quarterly Report of Attorney General, Volume XXIII, page 31) and in a very recent opinion, held that the codification of the said Act (Code 1940, Title 12, Sections 73-91) did not affect this conclusion. Opinion to Hon. M. E. Marlette, Clerk, Circuit Court, Lowndes County, Hayneville, Alabama, dated July 28, 1942. This being true, it is my opinion, in view of the Local Act heretofore referred to, and particularly Section 5 thereof, that

Section 80, supra, does not affect St. Clair County, and therefore, the judge of probate or chairman of the court of county commissioners would have no authority to employ a clerk or clerical assistant by virtue of the same.

Title 23, Section 43, supra, authorizes the employment of a clerk by the court of county commissioners, board of revenue, or like county governing body, but such employment is limited to duties concerning roads and bridges, and compensation therefor is payable only out of road and bridge funds of the county.

Biennial Report of Attorney General, 1928-30, page 977;

Biennial Report of Attorney General, 1930-32, pages 602, 667;

Biennial Report of Attorney General, 1936-38, page 108;

Quarterly Report of Attorney General, Volume XXV, page 154.

Therefore, answering your first inquiry, it is my opinion that the only authority that the Court of County Commissioners has to employ a clerk at Pell City is found in Code 1940, Title 23, Section 43, and authorities supra, and such employment would be limited to duties concerning roads and bridges and the compensation of such clerk would be payable only out of road and bridge funds of the county.

Answering your second inquiry, I wish to call attention to the fact that this office has held that a clerk employed by a county governing body under the general law, supra, is not an officer, but is a mere contractor with the county. In other words, his employment is by virtue of a contract with the county. Biennial Report of Attorney General, 1936-38, supra.

The question is therefore presented as to whether or not the clerk of the probate office at Pell City could make such a contract of employment with St. Clair County.

Code 1940, Title 41, Section 211 provides as follows:

"§ 211. County officers interested in county contracts.—Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract, for work or services of the county, or who is employed in any way under such contract, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract, or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers; but this section shall not be construed to prevent the court of county commissioners, board of revenue, county commission or other governing body of the county from employing as attorney to such governing body an attorney who holds an office which does not preclude him from practicing law and does not require his full time and for which, as such of-

ficer, he is compensated on a per diem or fee basis, nor shall it be construed to prevent the treasurer in lieu of a county depository from being employed as clerk to the court of county commissioners, board of revenue, county commission or other governing body of the county."

It will be noted that the above section does not specifically enumerate probate clerks, but does include "any other state or county officer." The question then presents itself as to whether the clerk of the probate office in Pell City would be considered in the classification of "any other state or county officer" within the contemplation of Code 1940, Title 41, Section 211, supra. I think so.

There are two probate offices in St. Clair County; one at Ashville and the other at Pell City. Section 5 of Act No. 94, H. 264, approved February 25, 1907 (Local Acts, 1907, page 140) provides that the probate judge of said county is required to appoint and keep a clerk in charge of his office at Pell City. Section 5 of said Act is as follows:

"Section 5. The probate judge of said county shall keep a clerk in charge of his office in Pell City when he himself is not personally present, and such clerk shall have authority to discharge all the duties imposed by law on the clerks of the probate judges of this State, and for the acts of such clerk the probate judge shall be responsible on his official bond. That the probate judge may require of such clerk a bond in a sum not greater than three thousand dollars, which bond shall be payable to the probate judge, with condition to faithfully discharge all the duties required of him by law as such clerk, and said bond when approved by the probate judge shall be filed and recorded in the office of the clerk of the circuit court at Pell City."

Such a clerk as provided for in Section 5, supra, is in truth and in fact a chief clerk (**Rowe v. Johnson,** 214 Ala. 510, 108 So. 604), and is therefore a public officer, or holds office under the authority of the State. Opinion to Hon. M. E. McConnell, Judge of Probate, Sumter County, Livingston, Alabama, under date of March 31, 1941, (Quarterly Report of Attorney General, Volume XXII, page 223); **Scruggs v. State,** 111 Ala. 601, 20 So. 642.

Since the clerk of the probate office at Pell City is a public officer, or holds office under the authority of the State, he comes within the classification of "any other state or county officer", as used in Code 1940, Title 41, Section 211, supra. Therefore, it follows that he is prohibited from taking a contract for work or services from the county. Biennial Report of Attorney General, 1936-38, page 108.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 5, 1942.

Hon. Ervin E. Dunn,
Judge of Probate,
Wilcox County,
Camden, Alabama.

Counties—Wilcox County—

1. Purchases made under Section 11 of Act No. 436 (Local Acts 1939, page 261) without the use of a requisition, signed by a county official or employee and approved by the Judge of Probate, are not valid claims against Wilcox County.

2. The Judge of Probate of Wilcox County cannot issue warrants in payment of purchases not made in compliance with the provisions of said local act.

3. There is no implied liability on a county to pay for benefits received under a contract made in violation of positive statutory provisions.

Opinion by Assistant Attorney General Mooneyham.

Dear Sir:

I have your request for official opinion bearing date of May 14, 1942, which is as follows:

"On April 25, 1942, I wrote you as follows:

"'Under Senate Bill 397 by Mr. Henderson, Local Law of Alabama passed during the Regular Session 1939, Section 11, provision is made, among other things, as to purchases made for the County by the County Road Engineer. This Act provides that for purchases of less than $100.00 requisition must be made by said Engineer or his duly authorized agent and a purchase order must be signed by the Probate Judge as chairman of the Court before the delivery is made to the County.

"'We have a number of cases in this County where on account of an emergency, merchandise such as gas, oil, lumber, etc., was sold and delivered to the county before the requisition was issued and before the purchase order was signed. The County actually received said merchandise but the dates on the requisition and purchase orders show that they were issued subsequent to the sale and delivery. In most instances it is just a matter of a few days difference. I have refused to issue warrants under these circumstances.

"'Please give me your opinion as to whether or not it will be legal for me to issue warrants in payment of the aforesaid claims in

view of the fact that we actually received the benefit of the goods. I would appreciate your immediate attention to this matter.'

"In your letter of May 4, 1942, in answer to the question set out in the aforesaid letter you referred to and enclosed a copy of an opinion dated August 20, 1938, to Hon. Daniel T. McCall of Mobile, Alabama, and you state that you think this opinion answers our question. Maybe it does; but to be absolutely certain about the matter, we would like for you to render us an opinion based on the Henderson Local Law passed during the Regular Session of 1939. Of course we understand that we come under the Uniform System of Accounting and must abide by its terms and conditions but since we have a local law dated subsequent to the Uniform Accounting Law of 1935 we would like an official opinion answering our questions and based on both the Act of 1935 and the Henderson Local Act of September 13, 1939."

Section 11 of Act No. 436 (Local Acts 1939, page 261) reads as follows:

"Section 11. PURCHASES: The court of County Commissioners of Wilcox County is hereby charged with the duty of purchasing in the name and for said county, all road machinery, tools, implements, books, blanks, office stationery, office or house furniture, fixtures, articles or other things which may be required by law for the county and which are to be paid for out of any of the funds of the county. The court may at its option by agreement with the State Department of Finance make purchases through that State Department or other state agency authorized by law to handle such purchases and when doing so all such purchases shall be handled in the same manner as purchases which are made for the State of Alabama. In case the Court of County Commissioners elects to make its own purchases it shall do so only after bona fide competitive bids have been submitted. The court shall advertise for said bids at least one time in a newspaper published in the County of Wilcox and shall post notice calling for said bids at least three weeks before the letting of such contracts at the court house of said county and shall mail requests for bids to three or more of the leading firms or persons dealing in such commodities in the general trade territory in which Wilcox County is located, in order that due public notice may be given of intention to make said purchases. The County Road Engineer and the Judge of Probate may purchase material, tools, repairs and supplies in amounts not exceeding $100.00 (One hundred dollars) provided that report of such purchases are submitted to the court at the next regular meeting for approval. All persons, firms or corporations from whom purchases of any road machinery, repairs, materials, supplies or equipment and all persons, firms or corporations furnishing material or doing work on any road or bridge in Wilcox County, shall make out, itemize and swear to all claims for such machinery, repairs, material, supplies, equipment or service which shall be approved by the County Road Engineer and the Judge of Probate, in case of road machinery, repairs, materials, supplies or equipment for roads or bridges and by the Judge of Probate together with the other affected County official or employee, in case of other purchases not affecting roads or bridges. This approval for claims shall take place before the court allows the payment of same.

Such payments shall be made direct to such person or persons, firm or corporation doing such work or furnishing or selling such machinery, repairs, material, supplies or equipment. No purchase shall be made except on requisition signed by the county official or employee and approved by the Judge of Probate. No purchase above $100.00 (one hundred dollars) shall be made without order of a majority of the court and no claims of any kind shall be paid without a majority vote of the court. Such orders must appear on the minutes of the court. It shall be unlawful for the Judge of Probate to issue a warrant in payment of any purchase not made in compliance with these provisions."

It is to be observed that under this section the Court of County Commissioners are charged with the duty of making purchases for Wilcox County subject to the following specific conditions: 1. No purchase shall be made except on requisitions signed by a county official or employee and approved by the Judge of Probate. 2. No purchase above one hundred dollars shall be made without an order of a majority of the Commissioners Court. 3. Purchases of less than one hundred dollars may be made by the County Road Engineer and the Probate Judge, provided a report of the same is submitted to the Court at its next regular meeting. 4. It shall be unlawful for the Probate Judge to issue a warrant in payment of any purchase not made in compliance with these provisions.

Under date of March 12, 1941, this office rendered an official opinion to Hon. F. R. Albritton, Judge of Probate of Wilcox County (Quarterly Report No. XXII, page 208) in which this same local act was discussed. In this opinion, attention was called to the Uniform System of Accounting and to the requirements of the same in reference to the uses and purposes of requisitions and purchase orders. The opinion was also expressed therein that all requisitions should be signed by the interested county official or employee and approved by the Probate Judge.

If I understand the facts outlined in your request, it appears that the County Road Engineer made a number of purchases without requisition or purchase orders, and that subsequent to the time of purchase and after the merchandise had been delivered, the same were issued. Under this statement of fact, I am of the opinion that these purchases are not legal claims against Wilcox County and that you should not sign warrants for the payment of the same. I reach this conclusion for the reason that the above quoted section of your local act does not authorize the County Road Engineer to make purchases. It authorizes purchases of $100.00, or less, to be made by the Engineer and the Probate Judge and requires a report of the same to be made at the next regular meeting of the court. Even though this is true, such purchases can not be made except on a requisition signed by a county official or employee and approved by the Probate Judge. This definite provision of your local act seems to apply to any and all purchases made for the county. Under the facts related by you, it appears that this provision of the act was ignored and purchases made without any consideration being given same.

It might be argued that this interpretation will work an injustice to the vendors involved. Regardless of this, I am inclined to think that they are charged with notice of this provision of law and should have required a

purchase order from the county at the time of sale and before delivery of the merchandize. To hold otherwise would defeat the obvious purposes of said local act.

In further support of the conclusion herein reached, I wish to quote as follows from an opinion of this office to Hon. Dan T. McCall, under date of August 20, 1938, (Quarterly Report Vol. XII, page 142).

> "By General Acts of 1935, p. 44, a uniform system of accounting was set up. The purpose of this act was to make the bookkeeping uniform in each county of the state so that an audit of these books could be made more easily by the Comptroller. The fact that as regards purchases made for supplies for the road department, the uniform system was not carried out because there was no recording of these purchases as the Uniform Accounting Act requires, is not controlling as to whether or not these claims are legal claims against the county. If, as you state, these purchases have not been made in accordance with the provisions of the law governing the same, then in that event, these claims would not be legal charges against the county and you might properly refuse to sign these warrants. However, if these purchases were made in accordance with the law governing the same, i. e., that they were authorized or ratified by the county governing body and were commodities or items which the county road department required, but no bookkeeping entries were made in accordance with the uniform system of accounting, then, it is my opinion that these claims are legal claims against the county and the warrants must be signed by you; as the failure to conform to the Uniform System of Accounting does not affect the validity of the claims."

Here it was held that a failure to comply with the provisions of the Uniform System of Accounting would not invalidate a claim against Mobile County that was otherwise valid. Here, as in your case, a local law was involved and, in the McCall opinion, it was held that if the purchase was made in accordance with the provisions of the local act that the same would be a valid claim against the county even though the provisions of the Uniform System of Accounting were ignored. This conclusion was evidently reached on account of the fact that this Uniform System of Accounting was instituted primarily for the purpose of setting up a uniform system of bookkeeping in all the counties of the State in order that audits of the same could be more easily made. In addition to this a penalty is provided by said act for those county officials who fail or refuse to comply with its requirements.

In your local act, you have a mandatory provision saying that no purchase shall be made without a requisition, signed by a county official or employee and approved by the Probate Judge. No penalty is provided for failure to comply with this provision in making purchases for the county. Consequently, to hold that purchases made in disregard of this provision are valid claims against the county would be, in fact, a nullification of the objects and purposes for which the act was intended to remedy.

In reaching the above conclusion, I have not overlooked the doctrine of implied liability arising from the purchase and use of such goods and wares. On the contrary, I have given careful consideration to the same, and reached

the conclusion that, according to the great weight of authority, where the power of a county to make a contract is limited by statute, particularly where it is limited to a certain mode or manner of contracting, and other modes and methods are either expressly or impliedly forbidden, no implied liability arises against such county on account of a contract entered into in violation of such statutory provisions. Implied liability cannot attach where the express provisions of statute negative its existence. Neither will the law employ an implied contract to pay where an express contract would be illegal and void. This is true even though the county may have received the benefits of the contract which was made in violation of the provisions of a mandatory statute.

Attalla County v. Mississippi Tractor & Implement Co., 162 Miss. 864, 139 So. 628.

The Supreme Court of New Mexico, in the case of **Hagerman v. Town of Hagerman**, 19 N. M. 118, 141 P. 613, made the following observation, which seems to be in accord with the great weight of authority:

> " *** The Legislature has seen fit to place upon the exercise of the municipal functions by town boards of trustees certain restrictions. Certain formalities must be observed in the entering into of certain classes of contracts, among others the one in question, and, in addition to this, a limitation is imposed upon the amount of indebtedness contracted. These restrictions are for the security and to safeguard the rights of the taxpayers. To arbitrarily set aside, and hold that, regardless of the plain requirements of the statutes, where a town has received the benefits of a contract which it has no power to make, a party would be entitled to recover upon his quantum meruit, is to open the door to any course of dealing with the members of a town board which they may for the time being see fit to pursue. This, we think, is not the law in cases where a recovery is sought, based upon acts of the governing boards of municipalities not within their powers and required to be exercised by certain statutory requirements and under certain statutory limitations. If the principle contended for by appellants can be invoked, then there is no necessity for statutory limitations upon the powers of such boards, and no legal effect to any such statute."

For a full treatment of the subject of implied liability arising from contracts made in violation of statutory provisions, your attention is directed to the following authorities and the cases cited therein. **Bluthenthal and Bickert v. Town of Headland,** 132 Ala. 249, 31 So. 87; **Johnson County Savings Bank v. City of Creston,** 212 Iowa 929, 231 N. W. 705; 84 A. L. R. page 926.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 5, 1942.

Hon. J. O. Lee, Chairman,
Board of Revenue,
Lowndes County,
Hayneville, Alabama.

Counties—Lowndes County—

1. The Chairman, Board Members, and the Clerk of the Board of Revenue of Lowndes County may be liable for penalty in not having books and records kept according to provisions of the Uniform Accounting and Reporting Law.

2. Any county officer charged with any duty in receiving and disbursing public funds or other funds is liable to penalty for willful failure to keep records and books in the way and manner required by the Uniform System of Accounting and Reporting.

3. Chairman of Board of Revenue is liable for any warrant signed by him for an illegal claim.

4. Members of Board of Revenue are liable for negligence in auditing and allowing claims against county.

5. The Clerk of the Board of Revenue of Lowndes County is not liable for warrants signed by him which are in payment of illegal claims.

Opinion by Assistant Attorney General Mooneyham.

Dear Sir:

Your request for official opinion, bearing date of June 24, 1942, is as follows:

"Under date of May 23, 1942, Mr. M. E. Marlette requested an opinion as to whether Section 5 of the Lowndes County Local Law (Acts of 1894-5, page 186) had been repealed by Section 80 Title 12 of the 1940 Code.

"You will note by referring to this Act that the Circuit Clerk is, by virtue of Section 5, Ex-Officio Clerk of the Board of Revenue and is required under said section to do the things set out in your opinion to Judge Poyner, Vol. 8 page 246. You will also note under this section 5, I, as Chairman, do not have the authority to keep the books or records, nor do I have the authority to name the person who does keep them, unless Section 80 Title 12 of the 1940 Code repeals Section 5 of the Local Act.

"Section 3 Title 41 recites in part as follows: 'It shall be unlawful for any county officer to wilfully fail or refuse to keep the accounts of

his office or to make required reports according to the system of accounting and reporting so established, which shall be the official system of uniform accounting and reporting in county offices. Any county officer violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than $50.00 nor more than $500.00. A continued failure or refusal on the part of such officer, to comply with the provisions of this section shall subject such officer, as a liability on his official bond for neglect of duty, to a penalty of not less than $50.00 nor more than $100.00 per month for the period of such failure.'

"In an opinion dated February 11, 1939, Vol. 14 page 121, you held that it was the duty of the examiner to assess a penalty of $50.00 to $100.00 per month under authority of the Uniform System Act, against the county officer and his official bond for the period of a continued failure or refusal to comply with the Act.

"In case you should hold in your opinion to Mr. Marlette that Section 5 of the Local Act had not been repealed by Section 80 Title 12 of the 1940 Code, I would like for you to give me an opinion on the following:

"1st. Who is liable, I as Chairman, or the Clerk, under Section 3 Title 41 for a failure or refusal to keep the books and records as prescribed by the Chief Examiner of Public Accounts?

"2nd. Who is liable, the Chairman or Clerk, for illegal payments due to errors in calculations or extensions on claims paid by the County?"

Under date of July 28, 1942, I rendered an official opinion to Hon. M. E. Marlette, Clerk of the Circuit Court of Lowndes County, in which it was held that Section 5 of the Local Act No. 111, (Local Acts 1894-95, page 186) was still in force and effect, and that the codification of the County Financial Control Act (Code 1940, Title 12, Sections 73-91) did not repeal the same. A copy of this opinion is herewith attached for your information. In view of the holding in said opinion, I shall proceed to answer your inquiry.

Section 5 of said local act reads as follows:

"Sec. 5. Be it further enacted, That the clerk of the circuit court of said Lowndes county shall by virtue of his office, be clerk of said board; and he shall attend at all their meetings; he shall keep in security all their papers and documents; all claims against said county may be filed with and sworn to before him, without cost to the affiant; and he shall keep such record of said claims, and of the disposition thereof, as well as perform other duties as clerk of such board, as are now, or which may be required of him by law, or which the said board may require of him as their clerk. And he shall be paid for his services at the quarterly meetings of said board in a sum not to exceed the rate of one hundred and fifty dollars a year, payable at the end of each quarter."

By virtue of this section the clerk of the circuit court of Lowndes County is clerk of the Board of Revenue and is required to perform such duties as said local act imposes upon him in addition to those required by the general law, and the Board of Revenue of said county.

Section 3, Title 41, Code of Alabama, 1940, provides as follows:

"§3. Uniform system of accounting and reporting.—The department of finance is required to prepare such forms of bookkeeping and accounting books, records, reports, and other blank forms as may be necessary for the installation of a uniform system of accounting and reporting in and for the county offices of this state wherein the officers thereof are charged with any duties of receiving and disbursing public funds or other funds, and to transmit to such officers copies of such forms. The department of finance may change or altar such forms from time to time as appears advisable, having due regard in making such change, or changes, to the expense necessary in discarding the forms already on hand, and the use of forms as then prepared and required under this section. All such county officers shall be required to keep the accounts and make reports of their respective office in full accordance with the system of accounting and reporting so established and on the forms and records prescribed by the department of finance. It shall be unlawful for any county officer to willfully fail or refuse to keep the accounts of his office or to make required reports according to the systems of accounting and reporting so established, which shall be the official system of uniform accounting and reporting in county offices. Any county officer violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than fifty dollars nor more than five hundred dollars. A continued failure or refusal on the part of such officer, to comply with the provisions of this section shall subject such officer, as a liability on his official bond for neglect of duty, to a penalty of not less than fifty dollars nor more than one hundred dollars per month for the period of such failure."

I interpret this section to mean that any county officer, who is charged with any duty in receiving or disbursing public funds or other funds, is liable to a penalty for failure to comply with the provisions of said section. Quarterly Report of Attorney General, Volume XIV, page 121.

In the light of the above I must say before answering your first question that, before a penalty can be assessed it would be necessary to determine who was at fault in not keeping the books and records in the way and manner prescribed by said section. The clerk of your board is primarily responsible for keeping such records in the way and manner required by law, however, the Board of Revenue has the authority to require of him the performance of such additional duties as it may see fit. The Board could not require the performance of such duties in any other way or manner than that required by law. Any attempt on the part of the Board to require the Clerk to perform such duties in any matter contrary to the provisions of the Uniform System of Accounting would, in my judgment, subject the board members to a penalty. Therefore, in reply to your first question, it is my opinion that the chairman, the board members, and the clerk might be subject to a penalty for failure

to have the books and records kept in the way and manner prescribed by the Uniform System of Accounting and Reporting. Anyone or all of said officials might be liable, depending upon the facts in any particular instance.

In reply to your second question, I wish to advise you that, in my opinion, you would be liable as chairman for any warrant you signed in payment of any illegal claim. This would be true regardless of whether the illegality is occasioned by error or extension in the calculation of claims, or whether it arose as a matter of law. Likewise the board members, in auditing and allowing claims against the county, may be liable for negligence in the performance of such duties. Such liability could arise by allowing a claim in excess of the amount properly chargeable to the county or in allowing a claim which was altogether illegal. Quarterly Report of Attorney General, **Volume XIV, page 80.**

It is true that Section 8 of your local act, supra, requires the clerk of your board to sign all warrants when delivering them to claimants in exchange for their receipts. However, I do not know of any law that would make him liable for warrants drawn in payment of illegal claims.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 6, 1942.

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Solicitors—Deputy Solicitors—Code 1940, Title 13, Section 229(12) and Section 256.

Deputy Solicitor appointed by Circuit Solicitor under provisions of Title 13, Section 256, Code of 1940, not prohibited from engaging in private civil practice.

Opinion by Assistant Attorney General Vardaman.

Dear Sir:

Your request for an official opinion, bearing date of August 3, 1942, is as follows:

"Section 256 of Title 13 of the Code of Alabama of 1940 deals with the appointment of Deputy Solicitors and is the general law on the sub-

ject in Alabama governing such counties as Clarke County. The Deputy Solicitor, commonly called the County Solicitor, of Clarke County is appointed under and by virtue of this Section.

"Section 229 of Title 13 of the Code of Alabama of 1940, Sub-Section 12, deals with the duties of Solicitors and provides that: 'Deputy Circuit Solicitors as well as some other solicitors shall devote their entire time to the official duties of their respective offices.'

"Does Sub-Section 12 of Section 229 of Title 13 apply to Deputy Solicitors or County Solicitors in such counties as Clarke County, Alabama?

"Would the Deputy Solicitor or County Solicitor appointed under and by virtue of Section 256 of Title 13 be permitted to engage in the general practice of law, other than such practices as would conflict with the official duties generally referred to as Civil Practice?"

It is my opinion that Code of 1940, Title 13, Section 229(12) does not apply to deputy solicitors appointed under the authority of Code of 1940, Title 13, Section 256, and therefore such deputy solicitors may engage in the private civil practice.

Title 13, Section 256 deals only with the appointment of deputy solicitors. This section is as follows:

"§ 256. Deputy solicitors appointed; removal.—The several circuit solicitors, except as otherwise provided by law, shall appoint a deputy solicitor in each county of his circuit, to represent the state in all cases in the county court and inferior courts, and all preliminary proceedings, applications for bail and habeas corpus proceedings in all courts, aid or act for the circuit solicitor before the grand jury and in all matters in the circuit court when requested to do so by the circuit solicitor, and perform all the duties of the circuit solicitor in his absence when so directed by the circuit solicitor, and such deputies may be removed by the circuit solicitor at pleasure."

You will notice that the appointment and election of deputy circuit solicitors and assistant deputy circuit solicitors are provided for by Title 13, Sections 252-255.

Title 13, Section 229(12) provides as follows:

"§ 229. * * * 12. All circuit solicitors, deputy circuit solicitors and assistant deputy circuit solicitors shall devote their entire time to the discharge of the duties of their respective offices, and each and every one of such officers are prohibited from practicing law, directly or indirectly, in any court of this state or of the United States, or in any other manner or form whatsoever, except in the discharge of the official duties of their offices."

In my opinion, subsection 12, supra, is limited to circuit solicitors, deputy circuit solicitors and assistant deputy circuit solicitors, who receive all or a part of their compensation from the State of Alabama, and does not, in my opinion, apply to deputy solicitors appointed under the authority of Title 13, Section 256. Cf. Opinion of the Attorney General to Hon. Joe M. Bonner, Deputy Solicitor of Wilcox County, August 26, 1940, **Quarterly Report of the Attorney General,** Volume XX, page 191, a copy of which is enclosed.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 7, 1942.

Hon. J. M. Wood, Chairman,
Calhoun County Board of Revenue,
Anniston, Alabama.

Taxation — Exemptions — Industrial Plants and Factories — Code 1940, Title 51, Sections 3, 4 —

1. Industrial plant or factory not entitled to exemption from county ad valorem taxes under Code 1940, Title 51, Section 3 as to any property in existence prior to date of applying for such exemption as provided by Code 1940, Title 51, Section 4.

2. Grant of exemption to industrial plant or factory from ad valorem taxes discretionary with county governing authorities.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your letter of July 20, 1942, in which you request an official opinion, is as follows:

"The Southeastern Sand and Gravel Company, a corporation, has petitioned this Board for exemption from taxation, a copy of its petition being herewith enclosed. Please advise whether or not the Southeastern Sand and Gravel Company is entitled to the exemption requested under Title 51, Section 3 of the Code of 1940."

The petition, copy of which you enclosed in your letter, is as follows:

"State of Alabama
"Calhoun County

"To the Board of Revenue of Calhoun County, Alabama.

"Comes Southeastern Sand & Gravel Co., Inc. a corporation and respectfully petitions that the court under Title 51, Sections 3 and 4, of the Code of Alabama of 1940, to exempt it from taxation under said Sections for a period of ten years, and from the payment of all County taxes which the court is authorized to remit, or to exempt Petitioner from the payment of under said Section, and alleges that the Petitioner is a corporation organized under the laws of the State of Alabama on the 18th day of February, 1933 with its principal place of business at Tallassee, Alabama. On the first day of December 1938 this Corporation constructed a plant at Anniston, Alabama for the purpose of operating a concrete pipe plant in the City of Anniston for the manufacture of concrete pipe, that Petitioner has leased real estate on 18th Street and Railroad in the City of Anniston, and will operate a plant on said real estate and install thereon works, machinery and other equipment for the manufacture of concrete pipe.

"Wherefore your Petitioner, Southeastern Sand and Gravel Co., Inc., requests that it be exempted from all taxes on its plant, machinery, and equipment, which the Board of Revenue of Calhoun County, Alabama is authorized and empowered to remit or exempt it from, which said taxes to be exempted and remitted shall include taxes on its plant, and extensions or additions to same, and on all plants, works, machinery, and other equipment of such factories or additions or extensions thereto and also all the capitol stock of such factories and plants, which said exemptions shall continue for a period of ten years from October 1, 1941, but shall not include school taxes.

"(Signed) SOUTHEASTERN SAND & GRAVEL CO., INC.

"ROBERTS BLOUNT

"PRESIDENT.

"State of Alabama, Elmore County

"Before me Mack H. Jolly, a Notary Public in and for said county and State, personally appeared Roberts Blount, who being duly sworn, says that the averments of the above and foregoing petition are true and correct to the best of my knowledge, information, and belief.

"(Signed) ROBERTS BLOUNT

"Sworn to and subscribed before me this 16 day of May, 1942.

"MACK H. JOLLY

"Notary Public"

An examination of the above quoted petition reveals that the facts set out therein are not entirely clear. In order to intelligently answer the question posed in your inquiry, it becomes necessary to assume the following facts, as I gather them from said petition, to-wit:

That petitioner, Southeastern Sand and Gravel Company, Inc., constructed a plant or factory at Anniston, Alabama, on December 1, 1938, for the purpose of manufacturing concrete pipe, and has been operating such plant or factory since that date. That petitioner has now leased real estate in the City of Anniston, Alabama, on which it proposes to construct another plant or factory, and in which it will install works, machinery and other equipment for the manufacture of concrete pipe. That petitioner seeks exemption from ad valorem taxes on both of said plants or factories, works, machinery, other equipment, extensions or additions thereto, and also on all the capital stock of such factories, or plants, to continue for ten years from October 1, 1941, exclusive of school taxes.

Thus, the facts of the petition, as re-stated, present two questions for determination, to-wit:

1. May the Board of Revenue of Calhoun County grant petitioner exemption from ad valorem taxes on its plant or factory constructed at Anniston, Alabama, on December 1, 1938, and which was complete and in operation on May 16, 1942, the date of application for such exemption?

2. May said Board of Revenue grant petitioner exemption from ad valorem taxes on a plant or factory, and the capital stock of such plant or factory, which petitioner **proposes to construct** on real estate recently leased by itself in Anniston, Alabama, and in which it proposes to install works, machinery, and other equipment for the manufacture of concrete pipe?

The answer to the first question must be in the negative.

This office has heretofore held that a plant or factory already built, without prior application for the exemption, is not thereafter entitled to same. Quarterly Reports of Attorney General, Volume XVII, page 283; Quarterly Reports of Attorney General, Volume XXIV, page 93.

The answer to the second question is in the affirmative.

The paramount purpose of the execution statute is to induce investments in new properties by encouraging the construction, establishment, building or enlargement of industrial plants or factories located, or which propose to locate, in the State of Alabama. Such statute looks only to the future in the accomplishment of its purposes.

With respect to the new plant or factory which the petitioner proposes to construct on the real estate recently leased by it in the City of Anniston, I am of the opinion that the Board of Revenue of Calhoun County is empowered by law to grant exemption from ad valorem taxes on such new plant or factory, works, machinery, and other equipment and also on all the capital stock of such plant or factory, or increase in the capital stock made for the purpose of making additions thereto or extensions thereof, for a period not exceeding ten years from the date of completion of such plant or factory, or from the date of completion of such addition or extension thereof. Code 1940, Title 51, Section 3. Provided, however, that the Board of

Revenue grants the exemption before October 1, 1942, at which time the lien of the State and County for 1943 ad valorem taxes attaches to all property of the Southeastern Sand and Gravel Co., Inc., in existence and subject to taxation on said date, in the absence of exemption therefrom at that time. Code 1940, Title 51, Section 884-Revenue Act 1935, page 566, Section 372.

It is to be observed that the application must be made to the governing body of the county, for exemption from county tax, and to "the constituted authorities of the city or town," for exemption from municipal tax, **"in which it is proposed to locate"** the plant or factory. Code 1940, Title 51, Section 4. It may be added that it is not obligatory upon the grantors of the exemption to take affirmative action on the application for same. They are free to deny the exemption. Quarterly Report of Attorney General, Volume XXIV, page 93.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 8, 1942.

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Code 1940, Tit. 51, § 619—Mortgage Filing Tax—Reconstruction Finance Corporation—

Mortgage to Reconstruction Finance Corporation, although delivered or offered by the mortgagor to the probate judge for record is not subject to the mortgage filing tax.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for official opinion bearing date of August 3, 1942, is as follows:

"A Chattel mortgage was delivered to this office today for probate by the mortgagor. This mortgage being from a Motor Company in the City of Clanton to the Reconstruction Finance Corporation in the amount of $19,292.09.

"Will you please advise me whether there is any mortgage filing tax due upon this instrument. I cite you to your Opinion of Volume 15 at

page 285, this Volume covering the period from April 1939 through June, 1939; and also call your attention to Opinion of Volume 17 at page 218, this Volume covering the period from October, 1939, through December 31st, 1939.

"It seems to me that your Opinions are clear that there is no tax due since this is an instrumentality of the United States, except for the fact that the mortgage was delivered to this office to be recorded by the Mortgagor. While I do not see that the physical fact of delivery would make any difference, still I would like to have your definite opinion on this question."

Code 1940, Tit. 51, § 619, provides, in substance, that no mortgages or instruments of like character "shall be received for record," without payment of the tax thereby imposed. So far as disclosed by the statute it is immaterial by whom the mortgage may be actually delivered or offered to the probate judge to be recorded. The pith of the matter is that the mortgage shall not be received, accepted or recorded without payment of the tax, regardless of who may offer it for record.

Obviously, in the present instance, the mortgagor in offering the mortgage for record is acting in behalf of the mortgagee. No doubt the mortgagee for its own security requires that the mortgage be of record before it will close the loan thereby secured and pay the amount of the loan to the mortgagor. Having received the mortgage for examination and approval, the mortgagee may engage the mortgagor or any other person in its behalf to deliver the same for record at the probate office. In my opinion it is immaterial whether the mortgagor or some other person actually delivers or offers the mortgage for record.

The essential point is that the mortgage is offered for record and is to be recorded for the benefit of the mortgagee and the debt thereby secured will be assets or capital belonging to the mortgagee, Reconstruction Finance Corporation, a federal agency or instrumentality.

Such agencies are subject to taxation by the State only to the extent authorized by Congress, and Congress has not authorized the State to exact the mortgage filing tax upon mortgages executed to such agencies. Quarterly Reports, Attorney General: Vol. XIV, page 271; Vol. XVII, page 218. **Federal Land Bank v. Crosland,** 261 U. S. 374, 67 L. ed. 703, 29 A.L.R. 1. **Pittman v. Home Owners' Loan Corporation,** 308 U. S. 21.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 8, 1942.

Hon. Ray B. Hankins,
Coroner, Lamar County,
Vernon, Alabama.

Coroner—Discharging duties of Sheriff—

Coroner can only act for sheriff in those circumstances enumerated in Title 12, Section 59, Code of 1940.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your letter of August 3, 1942, in which you request an official opinion, is as follows:

"Title 11, Section 94, Code of 1940, provides that 'For all services performed by the Coroner when discharging the duty of Sheriff in cases authorized by law, he shall be entitled to the same fees that are allowed the Sheriff for similar cases.'

"Please advise me if it is the duty of the Coroner to serve subpoenas on the Sheriff in cases in which the Sheriff is a witness in the County and Circuit Courts, and if so, is the Coroner entitled to a fee of fifty cents for such service.

"In connection with this inquiry please consider the fact that the Sheriff is oftentimes a witness in cases coming before these courts and is prohibited by law from serving subpoenas on himself. Too, he can lawfully, and sometimes does, attend court by deputy, unless subpoenaed as a witness in a case."

Title 11, Section 94, Code 1940, to which you refer in your letter, provides in pertinent part as follows:

"§ 94. Coroners' fees.—The coroner is entitled to the following fees:

* * * For all services performed by the coroner **when discharging the duty of sheriff in cases authorized by law,** he shall be entitled to the same fees that are allowed the sheriff for similar services." (Emphasis supplied)

The duties of the sheriff which the coroner **is authorized by law** to discharge are found in Title 12, Section 59, Code 1940, and are as follows:

"§ 59. When to discharge duties of sheriff.—The coroner must discharge the duties of the sheriff:

"When the office of sheriff is vacant, and until his successor is qualified;

when the sheriff is imprisoned;

in cases to which the sheriff is a party;

in such cases as he is directed by the judge of probate."

It is my judgment that the coroner can only act for the sheriff in those circumstances enumerated in Section 59, supra; this upon the authority of Sections 121 and 130 of 57 C. J., pages 772, 777, the pertinent parts of which are respectively as follows:

"§ 121. * * * While it is proper for the coroner to act when the sheriff is disqualified within the terms of the statute, a coroner cannot exercise the powers of the sheriff under circumstances not specified in the statute. * * *"

"§ 130. 4. Authority of Coroner Acting as Sheriff. Where the statute specifies the circumstances under which a coroner may act as sheriff, the coroner cannot exercise the powers and perform the duties of the sheriff unless such circumstances exist. * * *"

In view of the fact that the coroner can only discharge the duties of the sheriff when those circumstances enumerated in Section 59, supra, exist, it is my opinion that it is not the coroner's duty, nor is he authorized to serve subpoenas on the sheriff in cases in the county or circuit court in which the sheriff is a witness.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 11, 1942.

Hon. J. W. Brock,
Judge of Probate,
Coffee County,
Enterprise, Alabama.

Fine and Forfeiture Fund—Registered Claim—Amount—

Where amount shown by original claim and amount shown by County Treasurer's register differ. the original claim, in the absence of fraud, governs.

Opinion by Assistant Attorney General Vardaman.

Dear Sir:

Your letter of July 9, 1942, in which you request an official opinion, is as follows:

> "On December 19, 1928, the Judge of Probate of Coffee County issued warrant No. A 562 against the fine and forfeiture fund of said county to W. H. Watkins, Sheriff, in the amount of $24.00. Sheriff Watkins filed this warrant with the County Treasurer and it was registered on the same day of its issuance, but in registering this warrant the County Treasurer inadvertently showed on his registration book the amount thereof to be $3.00 instead of $24.00. The fine and forfeiture fund of this county is now in position to pay this warrant.
>
> "Please write me whether under sub-division 5 of Section 33 of Title 12 of the 1940 Code I am authorized to pay this warrant in full notwithstanding many other warrants having been registered subsequent to the registration of this warrant and there is not sufficient money on deposit in the fine and forfeiture fund to pay all warrants which have been registered against it. In other words will the error of the County Treasurer make it unlawful for me to pay more than $3.00 on the warrant at this time and require the holder thereof to re-register the same and take his place for the balance of $21.00 behind all the other warrants which have been registered against said fund since December 19, 1928. Your early reply will be greatly appreciated."

Code of 1940, Title 12, Section 33(5), to which you refer in your request, provides as follows:

> "§ 33. Duties.—It is the duty of the county treasurer: * * * To number and register, in the order in which they are presented, all claims against the fine and forfeiture fund which have been duly authenticated as claims against such fund, and without being audited and allowed by the court of county commissioners, such register showing the number of the claim, the date presented for registration, to whom payable, when it accrued, the character of the claim and the amount thereof; and to pay the registered claims of state witnesses in the order of their registration, and whenever there is a surplus of such fund, over and above the sum required to pay the registered claims of state witnesses, he must apply such surplus to the payment of the claims of officers of court in the order of their registration. All local laws in conflict herewith are hereby expressly repealed. * * *"

From your inquiry, it appears that Sheriff Watkins did all that was required of him when he presented the claim to the County Treasurer for registration. I assume that the Treasurer correctly registered the claim in all respects, except as to the amount of the claim. I further assume that the Treasurer complied with Title 12, Section 33(6), which provides as follows:

> "§ 33. Duties.—It is the duty of the county treasurer: * * * Upon the registration of a claim he must indorse thereon the number and date of registration and sign his name thereto. * * *"

If the above assumptions are correct, and from the wording of your inquiry, I feel sure that they are, the claim of Sheriff Watkins was, within the purview of Title 12, Section 33(5), registered. "The official entry of the proper officer on a paper shall be sufficient evidence of its registry." Code of 1940, Title 7, Section 409.

Certainly if the fine and forfeiture fund had had sufficient monies to pay the claim of the sheriff when the same accrued, he would have been entitled to the face amount of the claim. Can it be said then that the error of the county treasurer in recording the amount of the claim rendered the registration void? I think not.

This opinion is based upon the assumption that the original claim issued to the sheriff is true and authentic and bears no evidence of alteration or fraud. If any evidence of fraud or alteration should be found on the original claim, or if the original claim does not tally with the records of the circuit clerk, then the treasurer would, in my opinion, be justified in refusing to pay more than the amount appearing on his register.

I think it apparent from the foregoing that the question here presented is a question of fact, and that every question of fact must be governed by the surrounding circumstances. However, all other things being equal, the original claim, in the absence of fraud, is, in my opinion, better evidence of the amount than the treasurer's register.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 11, 1942.

Hon. Howard Kirby, Clerk,
Circuit Court, Etowah County,
Gadsden, Alabama.

Clerk's pay—Transmitting articles for inspection by Supreme Court or Court of Appeals—

Whenever instruments or objects which have been used in evidence in a criminal case which is appealed to the Supreme Court or the Court of Appeals are of such nature or character as to make it impracticable to attach or incorporate the same in the transcript and counsel or the register or clerk makes application by proper petition for the same to be sent up to the Supreme Court or Court of Appeals for inspection and consideration, the Court may so direct that they be forwarded for such purposes and the expense of transmitting and returning the same by the clerk should be paid from the county treasury.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

Your letter of August 5, 1942, in which you request an official opinion, is as follows:

"Please render to me your opinion on the following matter.

"A certain defendant in a criminal case has taken an appeal to the Supreme Court and his attorney has informed me that he is going to petition said Court for an order to me as Clerk to send to said Court certain exhibits admitted and used as evidence, these exhibits being an Automobile tire, a front automobile fender and several articles of clothing.

"My question is, whose duty is it to pay the expense of sending said exhibits to Montgomery and the expense of their return to this County?

"I will appreciate it very much if you will give me a prompt ruling on the matter as I am now working on the transcript in the case."

In answering your inquiry, I call your attention to Code 1940, Title 15, Section 379, which is as follows:

"§ 379. Transcript on appeal; when made out and forwarded.—When the execution of the judgment has been suspended as provided in this article, or when an appeal is taken without such suspension, it is the duty of the clerk of the court in which the case was tried to make out a full and accurate transcript of the record, attach his certificate thereto, and transmit it to the clerk of the supreme court or the court of appeals, within twenty days thereafter; or within twenty days after the signing of the bill of exceptions; or if the bill is not signed and filed, such transcript must be made out and forwarded within twenty days after the expiration of the time allowed by law for the signing of the bill of exceptions."

I also call your attention to the case of **Ex Parte Cameron,** 81 Ala. 87, 1 So. 20. You will see from the above quoted section that it becomes the duty of the clerk of the court in all criminal cases that are appealed to the Supreme Court or the Court of Appeals to make out a full and accurate transcript of the record, attach his certificate thereto and transmit it to the Clerk of the Supreme Court or the Court of Appeals. I presume the articles or exhibits referred to in your inquiry are to be sent up on an order of the appellate court, as provided by Rule 47, "Rules and Practice of Courts," which is as follows:

"Photographs, maps, etc., in transcripts.—In preparing the transcript for this court the clerk or register, when the reproduction of documents, such as maps and photographs which were introduced in evidence, is difficult or impracticable, may attach the original as a separate page or pages with the proper certificate and the same shall be considered as a part of the transcript. Or when instruments or objects which have been

used as evidence are of such a nature or character as to make it impracticable to attach or incorporate the same in the transcript, counsel or the clerk or register may by proper petition set forth the facts and this court may direct that the same be sent up for inspection and consideration in connection with the transcript."

Assuming I am correct in this, it becomes your duty to forward the same in compliance with said order. Therefore, since it becomes your duty to transmit or forward all records in criminal cases to the clerk of either the Supreme Court or the Court of Appeals, it is my opinion that you are entitled to be reimbursed from the county treasury. This is in accordance with the holding of this office in an opinion rendered to Hon. Chas. W. Lee, State Comptroller, under date of August 18, 1938 (Quarterly Report of Attorney General, Volume XII, page 111), a copy of which I am enclosing. I realize that this opinion is dealing with registers of the circuit court, but the clerk of the circuit court is also included in the statute on which the above opinion is based. I might say further the return of these articles is paid for by the state when returned by the Clerk of the Supreme Court, but in case this cost is not so paid, I think you could be reimbursed for the expense of their return in the same manner you are for transmitting the same to the Clerk of the Supreme Court or Court of Appeals.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 17, 1942.

Hon. A. C. Cook, Circuit Clerk,
Wilcox County,
Camden, Alabama.

Fees of circuit clerk and sheriff—Fine and Forfeiture Fund—Code 1940, Title 11, Sections 83 and 89.

1. In misdemeanor cases in which the defendant is sentenced to hard labor for fine and costs, or either, the sheriff and clerk are entitled to collect from the fine and forfeiture fund any fee not paid by the Department of Corrections and Institutions, provided there is a surplus in said fund.

2. In misdemeanor cases in which a defendant is sentenced to hard labor for fine and costs, or either, the clerk is entitled to a fee for entering judgment and also for entering sentence.

3. In felony cases in which the defendant is sentenced to the penitentiary, the clerk is entitled to a fee for entering judgment and also for entering sentence.

Opinion by Assistant Attorney General Mooneyham.

Dear Sir:

I have your request for official opinion bearing date of March 26, 1942, which is as follows:

> "Title 11, Sec. 83, par. e provides that hard labor sentences for misdemeanors 'shall have the effect of a return of the execution no property found.' In such cases then are the circuit clerks & sheriffs entitled to Fine and Forfeiture claims for fees not paid by the Department of Corrections and & Institutions?
>
> "Title 11, Sec. 89 provides that the Circuit clerk be entitled to a fee each for 'Entering judgment as to each defendant' & 'Entering sentence against each defendant.' In the case of a convicted misdemeanor fined fifty dollars & cost & the defendant does not pay fine & cost & is sent to Hard Labor for either the fine or cost or both, would this case carry both fees for judgment and sentence?
>
> "In a felony case tried by a jury returning a verdict of guilty & the defendant sentenced to the penitentiary by the judge, would this case carry both fees for judgment & sentence?"

Prior to the adoption of the 1940 Code, it was mandatory in all cases that an execution issue against the defendant and that it be returned marked "no property found" before an officer could go to the fine and forfeiture fund for his fees. Section 4039 of the 1923 Code, as amended; Quarterly Report of Attorney General, Vol. XVIII, page 111, and authorities therein cited. However, by virtue of Sub-section (e) of Section 83, Title 11, this is no longer required in misdemeanor cases when the defendant is sentenced to hard labor for the fine and costs, or either of them. Said Sub-section reads as follows:

> "§ 83. **Costs, how taxed and collected.**—* * *(e) if the defendant is convicted of a misdemeanor and sentenced to hard labor for fine and costs, or either, the fees for services under this article shall be paid by the state to the extent as now provided by law, and no execution shall issue against the defendant, and the sentence for fine and costs, or either, shall have the effect of a return of the execution 'no property found', and all such unpaid fees of the sheriff, clerks of court and state's witnesses shall be claims against the fine and forfeiture fund when evidenced as required by law; * * *"

In view of this statutory provision which is new to the 1940 Code, it is not now necessary to issue an execution against a defendant in a case of this nature, since the sentence for fine and costs, or either of them, has the effect of a return of an execution "no property found". In such cases, the clerk and sheriff may collect from the fine and forfeiture fund any fees which have not been paid by the Department of Corrections and Institutions, provided there is a surplus in said fund over and above the amount required

to pay registered claims of state witnesses. Your first question, in my opinion, should, therefore, be answered in the affirmative.

Your second question should also, in my opinion, be answered in the affirmative. Code 1940, Title 11, Section 89; Quarterly Report of Attorney General, Volume 23, page 238. You will recall that the 1923 Code (Section 3739) provided for a clerk's fee for "entering judgment against each defendant", and that this provision as found in the 1940 Code (Section 89, supra) now reads, "entering judgment as to each defendant." I am enclosing herewith, for your information, a copy of an opinion rendered by me under date of July 3, 1942 to Hon. Howard Kirby, Clerk of the Circuit Court of Etowah County, Gadsden, Alabama, in which this change is discussed.

Your third question is likewise answered in the affirmative. See authorities cited in answer to your second question. Under the facts stated, there was both a judgment and sentence to be entered against the defendant.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 17, 1942.

Hon. Ed Miller,
Sheriff, Blount County,
Oneonta, Alabama.

Courts of County Commissioners—Telephones—Jail—

The authority of the county governing body to use county funds for the purpose of paying telephone charges is found in Title 12, Section 12 (15) and Title 12, Section 13.

Under the authority of Title 12, Section 12 (15), the Court of County Commissioners must pay for the cost of telephone service in any of the county offices therein enumerated.

The authority conferred on the county governing body by Title 12, Section 13, is limited to county offices located at the courthouse and not governed by the terms of Title 12, Section 12 (15) supra.

The authority given the county governing body to provide telephones for the offices of the sheriff and jailer, by Title 12, Section 12 (15) authorizes the governing body to provide telephone service at the office of the jailer in the jail.

Whether or not a telephone located in the jail building is in the office of the jailer is one of fact to be determined by the county governing body.

Opinion by the Attorney General.

Dear Sir:

Your letter of August 10, 1942, in which you request an official opinion, is as follows:

"Would you please send me an opinion on the following subject: The jail and the house I live in is connected, therefore, I have only one telephone and I have that in my bed-room. I have paid this bill for the last five years and now I have decided being it is a jail phone that the county should pay, but they refuse because it is not in the jail."

If the county governing body of Blount County may expend county funds for the purpose set out in your letter, authority therefor must be found in Title 12, Section 12 (15), or Title 12, Section 13.

"§ 12. Authority of court.—The court has authority: * * * 15. To procure and provide telephones for the offices of the circuit judge, the clerk and register of the circuit court, the offices of the sheriff and jailer, tax assessor, and tax collector, and the judge of probate in their respective counties, and to pay for the same out of the general funds of the county; and said court of county commissioners or boards of revenue, or like body may, in like manner and for the same officer, establish telephones in both courthouses where the said officers maintain two offices in the county; and must install such telephone upon the request of the officer entitled thereto.* * *"

"§ 13. Telephones.—Boards of revenue or courts of county commissioners may designate which offices in the courthouse may have telephones installed therein."

In an opinion written by my predecessor in office, on September 16, 1935, to Hon. Charles W. Lee, State Comptroller, **Biennial Report of the Attorney General**, 1934-36, page 297, it was held that the Court of County Commissioners has no authority to furnish telephone service at the residence of a county officer. I think that this conclusion is eminently correct for the reason that Title 12, Section 12 (15) only authorizes the governing body to provide telephones for those offices therein enumerated, and Title 12, Section 13 only authorizes the governing body to provide telephones for the offices in the courthouse not specifically covered by the provisions of Title 12, Section 12 (15) supra.

I am of the opinion that Title 12, Section 12 (15) authorizes the county governing body to provide a telephone for the office of the jailer in the jail. This conclusion is in conflict with an opinion rendered by my predecessor in office on November 20, 1935, to Hon. W. C. Register, Sheriff of Geneva Coun-

ty, **Biennial Report of the Attorney General,** 1934-36, page 382, wherein it is held, "There is no law authorizing the county to pay for the telephone in the county jail." That part of the opinion rendered to Mr. Register is hereby overruled.

I am unable to ascertain from your letter as to whether or not you and your family actually reside in the jail building. If you do, it is my opinion that it is up to the county governing body to determine whether or not the telephone in question is located in the office of the jailer. If it is so located, then it is my opinon that the county governing body may pay for the cost thereof.

If your residence, however, is merely adjacent to the jail, or in close proximity thereof, I do not believe that the county governing body would be authorized to expend county funds to defray the cost of the telephone service in your residence.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 20, 1942.

Hon. W. O. Dobbins, Jr., Director,
State Planning Commission,
2 North Perry Street,
Montgomery, Alabama.

Municipal Corporations—Zoning Commission—Board of Adjustment—Planning Commission—

A municipal corporation may not consolidate the Board of Adjustment created by Section 781, Title 37, Code of 1940, and the Planning Commission authorized by Section 788, Title 37, Code of 1940.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for official opinion, bearing date of August 3, 1942, is as follows:

"A question has arisen relating to the interpretation of the Alabama planning and zoning legislation as it specifically relates to the administration of zoning ordinances which may have been passed by a municipal

planning commission and approved by the municipal legislative body. The crux of the problem is this: Can the legislative body of a municipality assign to the municipal planning commission as one of its duties the administration of the zoning ordinances within the municipality; or in other words, can the duties of the Board of Zoning Adjustment as set forth under Title 37, Section 781 of the 1940 Code be assigned to the municipal planning commission?

"This is in question in view of the requirement as set forth in Section 788 under Title 37 that 'all members of the commission shall serve as such without compensation and the appointed members shall hold no other municipal office, except that one of such appointed members may be a member of the Zoning Board of Adjustment or Appeals.'

"What the above will amount to, if the city commission should delegate this authority to the municipal planning commission, is that a formal Board of Adjustment would not be established and that the legislative body of the city would delegate to the planning commission the authority to administer the zoning ordinances, including the handling of any appeals from the ordinances.

"We believe that the legislative body of the city may provide for the administration of the zoning ordinances by the planning commission because under Title 37, Section 54, a city commission may delegate any of its executive or judicial duties to any board, commission, or individual."

My answer to your inquiry is in the negative.

Article 2 of Chapter 16, Code of 1940, which article is comprised of Sections 774-785, inclusive, finds its origin in Act No. 533, H. 991, approved September 14, 1935, General Acts 1935, page 1121. Article 2, Title 37, Section 781, creates the Board of Adjustment and defines its jurisdiction and powers.

Subdivision 1 of Article 3, Title 37, Code of 1940, finds its origin in Act No. 534, H. 992, approved September 14, 1935, General Acts 1935, page 1126. Under the terms of Section 787, a Planning Commission is authorized to be created by the governing body of a municipality passing a proper ordinance bringing into being such Planning Commission.

The Legislature, by the passage of Acts No. 533, supra, and No. 534, supra, created, or authorized the creation of, two separate and distinct boards, i. e., the Board of Adjustment and the Planning Commission, whose duties are in all respects different.

On the one hand, the Board of Adjustment has appellate supervision over rulings of any administrative officer of a municipal corporation, where such administrative officer has made a ruling concerning any zoning ordinance passed by the governing body of such municipal corporation.

The Planning Commission has no appellate jurisdiction, and no such jurisdiction is conferred upon such Commission by the act creating it, nor has such jurisdiction been conferred upon it by the Code of 1940.

As evidence of the fact that the Legislature has created two separate and distinct boards with different powers and authority, your attention is called to that part of Section 788, Title 37, Code of 1940, wherein it is provided that members of the Planning Commission shall serve as such without compensation, and the appointed members of such commission shall hold no other municipal office, **except that one of such members may be a member of the Zoning Board of Adjustment or Appeals.** This is positive evidence that the Legislature, when these two boards were created by Acts No. 533 and No. 534, supra, had in mind two separate and distinct boards or commissions, with separate and distinct powers and authority.

Premises considered, I am constrained to hold that the governing body of a municipal corporation may not delegate to the Planning Commission the powers and duties conferred upon the Board of Adjustment by Section 781 of Title 37, supra.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 21, 1942.

Hon. Jeff D. Smith,
Solicitor,
Madison County,
Huntsville, Alabama.

Justice of the Peace—Sheriffs—Costs and Fees—

1. Sheriff not entitled to collect fees from justice of the peace fine and forfeiture fund.

2. Fees payable from justice of the peace fine and forfeiture fund only where defendant is acquitted, or insolvent and unable to pay after conviction.

3. Guard fee—sheriff not entitled to in misdemeanor case, begun other than by indictment, when no conviction follows.

4. Where sheriff executes warrant or writ of arrest issued by a justice of the peace, he is entitled to the fee prescribed for sheriffs and not that for constables.

Opinion by Assistant Attorney General Vardaman.

Dear Sir:

Your request for official opinion, bearing date of August 11, 1942, is as follows:

"I would appreciate your rulings on the following questions?

"1. Is it lawful, under Par. 3, Sec. 418, Title 13, for a Justice of the Peace to deduct from fines and forfeitures collected by him, fees for the services of the sheriff in cases in which the defendant was acquitted, or insolvent and unable to pay after conviction,—the sheriff in these cases performing the services as the Justice had no constable in his precinct?

"2. Is it lawful for the Justice of the Peace to deduct witness fees in cases where the sheriff's deputies were witnesses, from the fines and forfeitures collected by him, in cases in which the defendant was acquitted or insolvent, and unable to pay after conviction?

"3. Is it lawful for a Justice of the Peace to deduct from fines and forfeitures collected by him, the amount due him for issuing a search warrant to search for prohibited liquors; and the fee of the sheriff for executing said warrants, in cases where no whiskey was found and no arrests were made?

"4. Is the sheriff entitled to a guard fee where a defendant is arrested on a misdemeanor charge, other than a capias issued following an indictment, and no conviction is had on said charge?

"5. What fee is the sheriff entitled to for serving a warrant or writ of arrest, issued from a Justice of the Peace court?"

It is my opinion that the questions numbered 1 and 2 in your inquiry must be answered in the negative in view of an opinion of this office, rendered on October 11, 1939, to Hon. B. P. Singleton, Chief Examiner of Accounts, Quarterly Report of the Attorney General, Volume XVII, page 78, a copy of which is enclosed.

It is my opinion that question No. 3 of your inquiry must be answered in the negative. Code of 1940, Title 13, Section 418, provides in part as follows:

"§ 418. Required to keep docket and exhibit it to grand jury; other duties.—It is the duty of every justice of the peace and notary public having and exercising the jurisdiction of justices of the peace:

* * * * * *

"To collect all fines imposed where the defendant is not sentenced to jail or hard labor to pay same; or an appeal is taken. He may deduct from fines and forfeitures collected by him, the amount due for his fees and those of the constable **in cases in which the defendant was acquitted, or insolvent and unable to pay after conviction,** a sum not to exceed fifty dollars for any calendar month; he shall pay the remainder of the fines and forfeitures collected by him to the treasurer or to the custodian of the county funds where there is no county treasurer, same to be paid semi-annually on the first Mondays in January and July of each year, and make his report at the next session of the grand jury; if he should

fail to make such payments as herein provided, he shall forfeit all right to make any deduction from his collections for cost due him and the constable for fees as herein provided. * * * (Emphasis supplied)

In view of the fact that nc arrest was made, certainly it could not be said the defendant was acquitted or convicted and found to be insolvent. Therefore, such fees cannot be paid from the so-called "Fine and Forfeiture Fund of the Justice of the Peace", Code 1940, Title 13, Section 418, supra.

It is my opinion that question No. 4 of your inquiry must be answered in the negative. Code 1940, Title 11, Section 100 provides in part as follows:

"§ 100. Sheriff's fees and allowance; sheriff to file application for fees, when.—Sheriffs are entitled to the following fees and allowances in criminal cases—that is to say:

* * * * *

"For guarding each prisoner lawfully committed to jail in the following cases:

In all felony cases whether convicted or not $2.00

In all arrests under indictment whether convicted not $2.00

In all other cases where convictions follow arrests $2.00

* * *"

Therefore, if the defendant is arrested on a misdemeanor charge, not under indictment, and is not convicted, the sheriff is not entitled to a guard fee. Quarterly Report of the Attorney General, Volume XVII, page 354.

In answer to the fifth question of your inquiry, it is my opinion that the sheriff is entitled to the fees provided for by Code 1940, Title 11, Section 100, for serving a warrant or a writ of arrest from a justice of the peace court. This question was decided by the case of **Trapp v. State,** 122 Ala. 394, 25 So. 194. As pointed out above, however, this fee cannot be paid from the fund provided by Code 1940, Title 13, Section 418.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 24, 1942.

Hon. Ervin Dunn,
Judge of Probate and ex officio Chairman,
Court of County Commissioners,
Wilcox County,
Camden, Alabama.

Wilcox County—Constitutional Debt Limit — Special Road and Bridge Tax — Voluntary and Involuntary Obligations — Preferred Claims—

1. Wilcox County has exceeded its constitutional debt limit.

2. Proceeds of special road and bridge tax of two and one-half mills and general tax of five mills, if the proceeds of the special tax are inadequate, should be used to pay the annual interest on, and set aside a proportionate part of the principal of, $200,000 of bonds of county issued in 1919, and maturing in 1949, in accordance with resolution of county governing body relative to authorization and issuance of same.

3. Appropriations from the general fund for public welfare purposes are for voluntary obligations of the county, the making of which, and the amount of which, if any are made, being matters that address themselves to the discretion of the county governing body.

4. Claims for the payment of such appropriations, if any are made, are preferred claims of the county, being claims for the support of the poor, in the order set forth in Code 1940, Title 12, Section 121.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

Your letter, as amended, requesting my official opinion is as follows:

"Request is made for official opinion, hereinafter set out, upon the following state of facts:

"1. The total assessed valuation of property assessed for taxation in Wilcox County for the fiscal year now current is $5,242,158.00.

"2. In the year 1919, Wilcox County, after election authorizing same, issued $200,000.00 of bonds maturing in 1949, pledging specifically the special Road and Bridge Levy for interest coupons and to create a sinking fund to retire the principal. These bonds are called 'Funding Road, Bridge and General Indebtedness Bonds,' the resolution of the Court of County Commissioners relative to authorization and issuance of said bonds contains the following:

" 'It is further ordered, that there be and there hereby is levied upon all the taxable property in the County of Wilcox, Alabama for each of the years 1919 to 1949, both inclusive, a special tax sufficient, in amount to pay the interest on all the said bonds as the same falls due and to provide a proportionate part of the principal thereof, and the proper officers of said County are hereby commanded annually to extend, assess, levy and collect said taxes, or that there shall be reserved out of the general tax levied each year, a sum sufficient to pay the interest on all the said bonds and to provide a proportionate part of the principal thereof, which said sum so levied or reserved shall be set aside and placed in a separate fund and be used only for the purpose of paying the interest and principal of the said bonds; and the said County of Wilcox hereby declares that the foregoing provision for the levy assessment and collection of taxes to pay the interest and principal of said bonds is made for the benefit of each and every person who may be or become the owner or holder of any of the said bonds or coupons.'

"The interest on said bonds has been paid as provided but no sinking fund has been reserved to meet the principal when it matures.

"The Special Road and Bridge tax has produced average annual revenue of $12,000.00 or slightly more; the interest requirements on these bonds amounts to $10,000.00 payable semi-annually on October 1st, and April 1st. The special Road and Bridge Fund contained a balance, on September 30, 1941, of $10,637.77, out of which interest and commissions amounting to $5,012.50 due October 1st, 1941 has since been paid.

"3. In September 1938, Road Fund Warrants in the amount of $67,000.00 were authorized and issued to refund valid indebtedness incurred for construction, maintenance or repair of public roads and bridges in said County prior to October 1st, 1935. These warrants pledge the full faith, credit and taxing power of the County, but provide for payment of both principal and interest by monthly schedule of payment from State Gasoline Taxes distributed to the several counties by creating a fund known as the 'Road Refunding Warrant Fund of 1938' and providing a schedule of monthly payments to be transmitted directly by State Comptroller to a named depository.

"4. So far as we can determine, the 3½% debt limit provided by Section 224, of the Constitution of 1901 applies to this County.

"5. As of September 30, 1941, the General Fund of the County had a surplus balance of $5,771.20, no provision having been made for Sinking Fund.

"6. Heretofore the County has divided the Luxury Tax Fund between the Welfare Department, County Health Department, and Farm Extension Service; the Beverage Tax Fund has been allocated to the Welfare Department and the appropriations to the Welfare Department have been supplemented from the General Fund by an appropriation of something more than $4800.000 per year. This County, some years ago, discontinued Alms Houses, and all matters relative to the care of the poor are handled by the County Department of Public Welfare.

"We desire your opinion as follows:

"(a) Has Wilcox County exceeded its constitutional debt limit?

"(b) If so, can the appropriation referred to in paragraph 6 be continued out of current general revenues? Can any voluntary appropriations be made to be paid out of current general revenues?

"(c) In view of the facts stated in paragraphs 2 and 3 above, is it necessary that the Sinking Fund, referred to in paragraph 2 above, be included in the Current year's Budget?

"(d) If so, can the surplus in Road & Bridge Fund at end of last fiscal year (paragraph 2 above) be used, together with the current year's revenue from Special Road & Bridge Tax, in budgeting the requirements for interest and Sinking Fund for the current year?

"(e) Under the circumstances stated, is the appropriation from the General Fund to the County Welfare Department a voluntary appropriation, or is it an involuntary appropriation under the provisions of Code Title 12, Sec. 121(5), or under the provisions of Title 49 of the Code?

"(f) In either event, can the appropriation from the General Fund to the County Department of Public Welfare be made or continued as heretofore?"

Since you raise no question as to the validity of the $200,000 of bonds issued in 1919 and maturing in 1949, and since I do not have a complete transcript of all the proceedings relating to the authorization and issuance of the same, I shall not consider the question of whether or not the same constitute a valid debt of the county, but will assume that they constitute a valid debt of the county, within the purview of Section 224 of the Constitution of Alabama, 1901, which section fixes the constitutional debt limitation of the various counties of the State. For like reasons I will not consider the question of whether or not the $67,000 of "Road Fund Warrants" issued in September, 1938, which pledged "the full faith, credit and taxing power of the county" constitute a valid debt of the county, but also will assume that they constitute a valid debt of the county, within the purview of said section.

On these assumptions, and the further assumption that there are no other debts of the county, within the purview of Section 224, supra (you make no reference to any other such debts), it appears that the outstanding debt of Wilcox County, within the purview of said section, now amounts to $267,000. The debt limit of Wilcox County is three and one-half percent of the assessed value of the property therein, which you state to be $5,242,158.00, or $183,475.53. Clearly, therefore, Wilcox County has exceeded its constitutional debt limit. See Section 224, supra; **Hagan v. Commissioners' Court of Limestone County,** 160 Ala. 544, 49 So. 417, and other cases collated under Section 224, supra, in Skinner's Alabama Constitution Annotated, beginning at page 804. This answers question (a).

Since questions (c) and (d) are interrelated and have to do with the payment of the interest on, and the creation of a sinking fund to retire the principal of, the $200,000 of bonds issued in 1919 and maturing in 1949, they will be considered and answered together, and since questions (b), (e) and (f) are interrelated and have to do with the question of whether or not an appropriation can be made to the county department of public welfare for public welfare purposes out of the general fund of the county, to supplement the appropriations made to such department for such purposes out of the "Luxury Tax Fund" and "Beverage Tax Fund," they will likewise be considered and answered together.

The quoted excerpt from the resolution of the court of county commissioners relative to the authorization and issuance of the $200,000 of bonds purports to levy a special tax upon all the taxable property in the county for each of the years from 1919 to 1949, both inclusive, sufficient in amount to pay the interest on all of the bonds as the same falls due and to provide a proportionate part of the principal thereof, and commands the proper officers of said county to extend, assess, levy and collect such tax annually, or else reserve out of the general tax levied each year a sum sufficient to pay the interest on all of said bonds and to provide a proportionate part of the principal thereof, said sum to be set aside and placed in a separate fund and used only for the purpose of paying the interest and principal of the bonds. Inasmuch as no tax rate is fixed in the above-quoted excerpt, it is my opinion that this excerpt from the resolution did not amount to the levy of a tax, even if it might be conceded, which I do not concede, that the county governing body could levy a tax in the year 1919 for each year thereafter, up to and inclusive of 1949. However, I am informed by officials of Wilcox County with whom I have discussed this matter that the special tax referred to in the quoted excerpt from the resolution, supra, is the special tax of not to exceed one-fourth of one per centum, or two and one-half mills, which the county is authorized to levy for the erection of necessary public buildings, bridges or roads by Section 215 of the Constitution of Alabama, 1901, supra, generally referred to as the special road and bridge tax; and that each year, beginning with the year 1919, such special tax of two and one-half mills has been levied, assessed and collected by Wilcox County under the provisions of Section 215, supra, and the statutory provisions giving effect to the same. You state that the average annual revenue produced by this tax is $12,000, or slightly more; that the annual interest on the bonds amounts to $10,000, payable semi-annually on October 1 and April 1; that the interest on said bonds has been regularly paid from the proceeds of said tax, but that a proportionate part of the principal of the bonds has never been set aside as a sinking fund to meet the principal when it matures.

While you do not so state, I presume that the balance of the proceeds of said special tax, other than the balance in the special road and bridge fund on September 30, 1941, has been used for other legitimate purposes of the county. If this is true, such money was so used improperly. See **First National Bank of Abbeville v. Terry, Briggs & Co.**, 203 Ala. 401, 83 So. 170; and **Jefferson County v. Henry**, 204 Ala. 381, 86 So. 44.

On the contrary, it is my opinion that after the adoption of the resolution of the court of county commissioners of your county relative to the authorization and issuance of said bonds, it was the duty of the county

governing body of your county, each year to set aside from the proceeds of said special tax, and the county general tax of five mills, if the proceeds of said special tax were inadequate, a sum of money sufficient to pay the interest on the bonds and a proportionate part of the principal thereof. I construe the words "to provide a proportionate part of the principal thereof" to mean that each year the county governing body should have set aside approximately 1/31 of the amount of money necessary to pay the principal of the bonds ($200,000) when it becomes due in 1949, or approximately $6,452. This, together with the interest, would require approximately $16,452 annually for the amortization of said bonds. The balance in the special road and bridge fund on September 30, 1941, should be used, as far as it will go, to provide the proportionate part of the principal of said bonds for the fiscal year 1940-41, and such part of the so-called "surplus balance" in the general fund on September 30, 1941, as is necessary, should also be used for this purpose. Then, in this, and each succeeding, fiscal year until the bonds become due, the annual interest on the same should be paid, and a proportionate part of the principal thereof should be set aside out of the proceeds of the special tax of two and one-half mills, and the general tax of five mills, if the proceeds of the special tax are inadequate.

However, I do not believe that the failure of the county governing body of your county in the past to comply with the terms of the bond resolution, in regard to providing a proportionate part of the principal of the bonds, makes it incumbent upon you to also set aside out of the proceeds of the special tax of two and one-half mills, and the general tax of five mills, if the proceeds of the special tax are inadequate, in each of the years between now and the year 1949, the year in which the bonds become due, a proportionate amount sufficient to make up the arreas. This answers questions (c) and (d).

You state in paragraph 6 of your letter of inquiry, as amended, that heretofore the "Luxury Tax Fund" has been divided between the county public welfare department, county health department, and farm extension service; that the "Beverage Tax Fund" has been allocated to the county public welfare department; and that the appropriations to the county public welfare department have been supplemented from the general fund by an appropriation of something more than $4,800 per year. I assume that by the words "Luxury Tax Fund" you refer to money paid to the county pursuant to Code of Alabama, 1940, Title 51, Section 784, from the net proceeds of the so-called sales tax, which must be used exclusively for full time public health service, public welfare, and extension service, in cooperation with the appropriate state agency or the Federal Government (see **Tuscaloosa County v Walker**, 235 Ala. 293, 178 So. 543); and that the words "Beverage Tax Fund" refer to money paid to the county pursuant to Code 1940, Title 29, Section 10, from the net profits derived from the proceeds of the Alabama Liquor Stores, one-half of which goes into the general fund of the county, and the other one-half of which must be used exclusively for the purposes of public health, old age pensions, and other purposes of the county department of public welfare. If you have appropriated to the county department of public welfare for public welfare purposes **all** of the money paid to Wilcox County pursuant to Section 10, supra, as paragraph 6 of your letter indicates, then, in reality, **one-half** of this amount has been appropriated from the **general fund** of the

county, and the appropriation to the county department of public welfare from the general fund, referred to in paragraph 6 of your letter as "something more than $4,800 per year," is, in reality, **that amount** plus **one-half** of the money paid to Wilcox County pursuant to Section 10, supra.

The real inquiry presented by questions (b), (e) and (f) of your request for official opinion is whether or not, in the present financial condition of Wilcox County, your county governing body may continue to appropriate that amount, or some similar amount to be determined by the county governing body, from the general fund of the county, to the county department of public welfare for public welfare purposes. The leading case on the legal propositions presented by this inquiry is that of **Brown v. Gay-Padgett Hdw. Co.**, 188 Ala. 423, 66 So. 161. In that case the court considered and decided questions concerning the fiscal operations of Jackson County at a time when the indebtedness of the county exceeded the limitation fixed by Section 224, supra, as does that of Wilcox County today. I quote in extenso, as pertinent, from the opinion of the court in that case:

"In the case of Gunter v. Hackworth, 182 Ala. 205, 62 South. 101, **we held that the indebtedness of Jackson County exceeds the limitation fixed by section 224 of the Constitution, and that the county could not incur any further indebtedness, even for the rebuilding of the county court house, which had been destroyed by fire.** Speaking in general terms, it was there said, per SAYRE, J., that:

" 'The prohibition against indebtedness is generally construed to apply to indebtedness in all forms, however incurred, or for whatever purpose. Such has been the ruling of this court.—Hagan v. Commissioners, etc., 160 Ala. 544, 49 South. 417, 37 L. R. A. (N. S.) 1027.'

"In Hagan's Case, supra, it was said, per DENSON, J., that: 'The obvious intent of section 224 is to restrain counties from obtaining money either upon the general credit of the county, or by pledge or transfer of its revenue or assets, thereby creating a debt and imposing additional burdens upon the citizens, which, whether directly or indirectly, involve increased taxation.'

"The questions presented by this appeal require a more specific consideration of the terms 'indebted' and 'indebtedness' as used in section 224 of the Constitution.

"It is clear that, if they are to be understood in their broadest signification, the effect of section 224 would be, not only to inhibit further indebtedness when the prescribed limit is reached, but also to practically forestall all municipal action; for certainly neither a county nor a city government could procced for a single day in the exercise and discharge of its municipal powers and duties without incurring, for some period of time, debts, or liabilities. **It becomes apparent at a glance that the makers of the Constitution could not, in reason and common sense, have intended any such result.**

"In short, the indebtedness intended is the obligation to pay more money than can be supplied by current funds, or by current revenues provided by lawful taxation for the fiscal year. And the requirement is that, whenever a county has reached the constitutional limitation, it must at once adopt the financial policy of paying as it goes.

* * *

"Legitimate county debts or obligations are of two classes: (1) Those which are prescribed and imposed by law, and are purely involuntary as to the county; (2) those which are merely authorized by law, and are assumed by the county with some measure of discretion, at least as to time and amount.

"Section 153 of the Code (the forerunner in the Code of 1907 of Code of Alabama, 1940, Title 12, Section 121) **makes a number of specified county obligations preferred claims against the general treasury, and requires the treasurer to set aside sufficient funds for their payment. We think also that, by necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligations, those involuntary obligations which are fixed and imposed by law must be regarded as preferred claims of a second class, which are entitled to precedence over the general and voluntary obligations of the county.**

"As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its ordinary current obligations incurred during and for the year for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred claims; and that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to the Constitution, and are therefore invalid as to their payment.

"We think it is clear, also, that such a county cannot **borrow money** even to provide funds for current and necessary municipal expenses." (Emphasis supplied)

As I construe this case, it lays down the following rules for the guidance of county governing bodies in the fiscal operations of counties which have exceded their constitutional debt limit:

1. Such a county cannot incur any further indebtedness, within the purview of Section 224, supra, for any purpose.

2. The "indebtedness" referred to in Section 224, supra, is an obligation to pay more money than can be supplied by current funds, or by current revenues provided by lawful taxation for the fiscal year.

3. Section 224, supra, requires that such a county at once adopt the financial policy of "paying as it goes."

4. There are two classes of legitimate county debts or obligations, involuntary and voluntary.

5. The obligations listed in Code of Alabama, 1940, Title 12, Section 121, whether involuntary or voluntary, are made by said section preferred claims against the general fund of the county of the first class, in the order there set forth.

6. By necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligations, involuntary obligations not listed in Section 121, supra, are preferred claims of a second class.

7. Voluntary obligations of a county not listed in Section 121, supra, are subordinate to all preferred claims of both the first and second class, but a county which has exceeded its constitutional debt limit may nevertheless expend current revenues for such current voluntary obligations, provided all current preferred claims of the first and second class have first been paid.

With these rules as a guide, it is now necessary to determine whether or not appropriations from the general fund for public welfare purposes are for voluntary or involuntary obligations of the county, and whether or not claims for the payment of such appropriations are preferred claims of the county.

Section 88 of the Constitution provides:

> "It shall be the duty of the legislature to require the several counties of the State to make adequate provision for maintenance of the poor."

Such a provision first appeared in the Constitution of 1868 as Article IV, Section 34. See also Constitution of 1875, Article IV, Section 49. However, said provision is not self-executing, and we must look to the provisions of the statutory law for our system for the support of the poor.

In the case of **Henry v. Cohen,** 66 Ala. 382, decided in 1880, our Supreme Court, in an able opinion by Mr. Justice Stone, dealt with the subject of the support of the poor in Alabama. I quote from the opinion in that case as follows:

> "We have made the citations above for the purpose of showing that pauperism and destitution, no matter from what cause they may spring, have always been regarded as matters of public concern, and that the care and maintenance of the destitute impose a public duty, which will justify and uphold a levy of taxes for the purpose. In England, there has long been a system of compulsory support of the poor, under which the local sub-divisions, into which their territory was divided, were compelled to maintain the paupers, having their domicile among them; and if they failed in this duty, a stranger could supply such necessaries, and compel the parish, or local sub-division, to refund the money so expended.

Many of the States of this Union have similar systems. See digest of their various rulings on their several statutes, in 10 U. S. Digest, first series, 586 and 642.

"In Alabama, we have not adopted a compulsory system, but have confided the subject to the Court of County Commissioners. That court has jurisdiction, 'to make such rules and regulations, for the support of the poor in the county, as are not inconsistent with any law of the State.' Code of 1876, §746, subd. 5. 'The Court of County Commissioners may purchase and hold lands and other property proper for the erection and continuance of a poor-house, and may, at their discretion, dispose of lands now, or hereafter owned for such purpose, and make titles therefor, and may make all appropriations and orders proper for the erection and continuance of poor-houses, and for the regulation and government of the poor and poor-houses.'

"It is contended for appellant, that the power of the Court of County Commissioners to provide for the support of the poor, is limited to inmates of the poor-house. This is too narrow a construction. The entire power and jurisdiction over this very important function and duty of government is confided to this necessary and useful tribunal. It is clothed with large powers, partly akin to each of the three great departments into which government is divided, and it is clothed with large discretion in their exercise. True, in the exercise of statutory, judicial powers, and in pronouncing judicially on the property rights of others, it is a court of limited jurisdiction, and its proceedings are to be tested by the intendments which pertain to statutory, limited jurisdictions.—2 Brick. Dig. 400, §14. But, in the matter of levying taxes, and making provision for the support of the poor, these rules do not apply.—Perry County v. Selma, M. & M. R. Co., at the last term (65 Ala. 391); State Auditor v. Jackson County, at the last term (65 Ala. 142). **That court, in making provision for the poor, are sole judges of the mode and measure of relief, and are not restricted to the confines, or instrumentalities of the poor-house.—** City of Lowell v. Oliver, 8 Allen, 247; Freeland v. Hastings, 10 Allen, 570; Booth v. Town of Woodbury, 32 Conn. 118; Inhabitants of Veazie v. Inhabitants of China, 50 Me. 518." (Emphasis supplied)

(The first statutory provision therein cited appears today, without change in legal effect, as Code 1940, Title 12, Section 12, Subsection (6), and the second statutory provision therein cited appears today, without change in legal effect, as Code 1940, Title 44, Section 2.)

From a reading of this case, it can be seen that it was there held that, under the then existing statutes, it was discretionary with the county governing body whether or not it would make provision for the support of the poor; and that, in making such provision, that body was the sole judge of the mode and measure of relief, and was not restricted to the confines or instrumentalities of the poorhouse.

In the case of **State ex rel. Farnham v Mims,** 174 Ala. 233, 57 So. 466, it was held that this power of county governing bodies was limited in unmistakable terms by statutory provisions on the subject new to the Code of 1907,

contained in Chapter 37 of the Political Code entitled "Paupers," and particularly in Sections 1603 and 1607 of that Chapter. The court held in that case that the effect of these statutory provisions was to restrict the support or maintenance of the poor of the county to the inmates of the poorhouse, except in cases of emergency, which could not avail to justify the use of county funds for a period exceeding one month. However, the next session of the Legislature passed a statute specifically authorizing county governing bodies which had no poorhouses to make other provision for the support of the poor in said counties in the manner, and to the extent, there set forth. See Act No. 447, S. 282, approved September 10, 1915 (General Acts 1915, page 384). This act was carried forward into the Code of 1923 as Section 6755, Subsection (13), and appears, without change in legal effect, as Code 1940, Title 12, Section 12, Subsection (12). Sections 1603 and 1607 of the Code of 1907, supra, were also carried forward into the Code of 1923 as Sections 2792 and 2796, respectively, in the chapter on "Paupers."

The Legislature of 1927 enacted a somewhat comprehensive statute "to provide for and regulate further the care, support and maintenance of the poor and paupers of the several counties of the State of Alabama." See Act No. 476, S. 196, approved September 9, 1927, (General Acts, 1927, page 521). Section 2792 (1603), supra, appeared in said act as Section 26, but Section 2796 (1607), supra was not included. However, Section 31 thereof specifically provided that if an almshouse or poorhouse had been established all paupers should be committed to the same, and that the county governing body could not appropriate money for the support of paupers outside the county, except in cases of emergency, as provided for elsewhere in said act. But by Act No. 604, H. 796, approved August 4, 1931, (General Acts, 1931, page 749) said section was amended to provide that in any county of less than 60,000 population if there was no almshouse or poorhouse, or the same was not of sufficient capacity to accommodate all the paupers in the county, then the county governing body might arrange for their support on the outside at a cost not exceeding $8 per month.

Then, in 1932 the Legislature passed Act No. 289, H. 671, approved November 14, 1932, (General Acts, 1932, page 283), which gave a county governing body the power and authority, with the approval of the State Child Welfare Department, to make other or further provision for the care of the poor and needy of the county, the distribution of any funds to be made through such agencies and in such manner as might be approved by the State Child Welfare Department.

Title 44 of the Code of Alabama, 1940, is entitled "Paupers" and contains a codification of Act No. 476, supra, but much of said act, including the first clause of Section 26, supra, and Section 31, as amended, supra, is omitted, whereas Section 18 thereof is a codification of Act No. 289, supra, with the State Department of Public Welfare being substituted therein for the State Child Welfare Department. Thus, it appears that the statutory provisions upon which the decision in **State ex rel. Farnham v. Mims,** supra, was rested are no longer a part of the statutory law of this State. Nor are there any similar provisions.

The reason for the substitution of the State Department of Public Welfare for the State Child Welfare Department in Section 18, supra, is that the

Legislature of 1935 created the State Department of Public Welfare, which absorbed the State Child Welfare Department. See Act No. 332, S. 365, approved August 27, 1935, (General Acts, 1935, page 762), Section 8 of which provides in pertinent part:

> "Section 8. The aim of the State Department shall be the promotion of a unified development of the Welfare activities and agencies of the State and of the local governments so that each agency and each governmental institution shall function as an integral part of a general system. In order to carry out effectively these aims it shall be the duty and responsibility of the State Department to: (1) Administer or supervise all forms of public assistance including general home relief, outdoor and indoor care for persons in need of assistance, and old age pensions, also including those duties that have to do primarily with the determination of need and authorization of relief now performed by the Alabama Relief Administration. * * *"

This act is codified in the first chapter of the Code of 1940, Title 49, entitled "Public Welfare." A careful perusal of that entire title leads me to the conclusion that practically all, if not all, of the vast program of that department is for the support of the poor and needy, and Sections 15, 19, 34 and 52 thereof specifically authorize counties to make appropriations for various purposes of that department.

When the presently applicable statutory provisions dealing with the support of the poor by the counties of the State (Code 1940, Title 12, Section 12, Subsections (6) and (12) and Titles 44 and 49) are considered in the light of the legislative and judicial history hereinabove related, it is my opinion that the rule laid down in the case of **Henry v. Cohen,** supra, still obtains, i. e., it is discretionary with the county governing body whether or not it will make provision for the support of the poor, and, in making such provision, that body is the sole judge of the mode and measure of relief, qualified only to the extent that if the county governing body makes provision for the care of the poor and needy of the county through the State Department of Public Welfare, the distribution of funds for such purpose shall be made through such agencies and in such manner as may be approved by said department. See Section 18, supra.

In the case of **Moore v. Walker County,** 236 Ala. 688, 185 So. 175, Mr. Justice Knight said for the court:

> "From the earliest times it has been recognized that one of the mandatory and imperative duties of a civilized government was to make suitable provision for its needy citizens,—citizens who are unable to provide for themselves. Laws to that end fall squarely within the police power of the state. This state, in keeping with all other states of the American Union, has always, with respect to its unfortunate needy, had a most tender regard, and has from time to time made many humane provisions. The legislature has made it a governmental duty of the several counties to make suitable provision for the support and care of its indigent citizens."

It might be argued that this is a holding that it is mandatory on a county governing body to make provision for the support of the poor, but when these statements are read in the light of similar statements in the opinion of the court in **Henry v. Cohen**, hereinabove quoted, wherein it was held that Alabama had not adopted a compulsory system for the support of the poor, I am persuaded that such is not its effect.

By Act No. 57, approved December 15, 1868, (Acts of Alabama, 1868, page 414), claims for the support of the poor were made preferred claims of the county. Such has been the statutory law of this State since that date. (See Code 1876, Section 829; Code 1886, Section 908; Code 1896, Section 1423; Code 1907, Section 153; Code 1923, Section 231, Subsection (5); Code 1940, Title 12, Section 121, Subsection (5).)

The premises considered, it is my opinion that appropriations from the general fund for public welfare purposes are for voluntary obligations of the county, the making of which, and the amount of which, if any are made, are matters which address themselves entirely to the discretion of the county governing body, but that claims for the payment of such appropriations, if any are made, are preferred claims of the county, being "claims for the support of the poor," in the order set forth in Section 121, supra.

You state in your letter of inquiry that your county, some years ago, discontinued almshouses and that all matters relative to the care of the poor are handled by the Department of Public Welfare. From what has been said hereinabove, it can be seen that such a plan for the support of the poor is clearly authorized.

Specifically answering the inquiry presented by questions (b), (e) and (f), it is my opinion that your county governing body, even though Wilcox County has exceeded its constitutional debt limit, may, if it so desires, continue to appropriate from the general fund of the county to the county department of public welfare for public welfare purposes the amount which has been appropriated to said department from the general fund in the past, or some similar amount, to be determined by you, provided the same can be paid from current funds.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 24, 1942.

Hon. E. T. Knight, Chairman,
Board of Revenue, Cullman County,
Cullman, Alabama.

Cullman County—Road and Bridge Commissioner, Local Acts, 1939, p. 13—Special Road and Bridge Tax—Constitution 1901, § 215—

The governing body of Cullman County is authorized to transfer to the Road and Bridge Commissioner of the county for construction of public roads and bridges any surplus remaining from the proceeds of the special tax levied under Constitution 1901, § 215 (a) for construction of roads and bridges, after payment of all debt for payment of which the special tax is levied; provided said special tax has not been heretofore pledged as security for payment of county bonds or other debt.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

I have your letter of May 20, 1942, in which you request my opinion as follows:

"The Board of Revenue would like to have your official opinion as to the legality and advisability of transferring funds from Special One Mill Refunding Road and Bridge Fund to the Highway Department.

"The Highway Department, being a separate and distinct set-up in the county, has requested the Board of Revenue to turn over to the Road and Bridge Commissioner all surplus funds in the Special One Mill Road and Bridge Fund not actually needed to pay current interest on the outstanding 3½% Refunding Road Bonds in the amount of $100,000.00. A schedule of Bond set-up is herewith attached for your information.

"We anticipate collecting $10,900.00 annually from the Special One Mill Road and Bridge levy for the period from 1941 through 1954, and you will notice we have used these figures in working up our schedule. Actually we have only received from the Tax Collector for this fund up to now this tax year, $10,879.31, and will probably get something like twenty-five or thirty dollars more in the final settlement with the collector. In this Board's opinion, tax receipts for all funds will fall short this next year.

"On May 27, 1941, the Board of Revenue adopted a resolution, promising to pay over to the Road and Bridge Commissioner that part or surplus in the Special One Mill Road and Bridge Fund not needed to pay the interest and principal of the outstanding bonds as they come due. In December 1941, the board was advised by State Auditor, Mr. C. B. Sims, that none of this fund could be transferred until all interest and bonds had been retired for which this special levy was pledged."

From additional information furnished by yourself it appears that pursuant to Code 1907, §§ 158-174, the electors of Cullman County at an election held March 17, 1913, authorized issue of $200,000 5% bonds "for the purpose of constructing public roads in Cullman County, Alabama;" that thereupon bonds to the amount of $160,000 were issued and sold for such purpose, dated July 1, 1913, maturing July 1, 1943, with interest at 5% per annum payable semi-annually and represented by coupons thereto attached.

You have not furnished a copy of the resolution of the Court of County Commissioners whereunder the bonds were issued and sold, but from a specimen bond it appears that said bonds are general obligation bonds. There is nothing to indicate that they were secured by pledge of any special tax, or that the county in connection with the sale thereof covenanted or agreed to create a sinking fund, out of the general fund or otherwise, for payment and retirement of the bonds upon their maturity in 1943. For the purposes of this opinion it is therefore assumed that no such covenant or agreement was made with the purchasers of said bonds or for the benefit of bondholders.

The county governing body under the Constitution, § 215, was authorized therefore to levy a special tax "not to exceed one-fourth of one per centum," to pay the debt created by issue of said bonds, issued as they were for the exclusive purpose of "constructing public roads in Cullman County."

Assuming that when said bonds were issued in 1913 there were no prior claims against the proceeds of the special tax so authorized to be levied the same was subject primarily to payment of the bonds, principal and interest. This did not, however, in my opinion, preclude the county governing body from thereafter using any surplus of said tax, over and above the amount necessary to satisfy the claims of its bondholders for any purpose within the purview of Section 215 Subd. (a) of the Constitution.

I am further advised $100,000 of said bonded debt has been refunded by an issue of $100,000 3½% Refunding Road Bonds, dated January 1, 1941, maturing $10,000 on January 1 in each of the years 1945 to 1954 inclusive, as to which in addition to pledge of the county's "full faith, credit, resources and taxing powers," there has been pledged "so much as shall be necessary to pay" principal and interest out of "the ad valorem tax of one-fourth of one per centum (¼ of 1%) authorized under Section 215 of the Constitution," etc.

Here, again, I find nothing to preclude the county governing body from using for any authorized purpose whatever surplus may remain annually out of its special tax levied under Section 215 of the Constitution after satisfaction of its obligations as to the $100,000 refunding road bonds and the outstanding $60,000 of its original road bonds of 1913.

From a certified copy of a resolution adopted February 2, 1942, it appears that your Board of Revenue has levied for the fiscal year beginning October 1, 1941, pursuant to Section 215, supra, "two and one-half mills (2½) of the value of the taxable property of Cullman County as assessed for revenue for the State as shown by the Book of Assessments after it will have been cor-

rected," to provide for sinking funds (a) to retire the $60,000 outstanding bonds of 1913 and to pay interest on said bonds, (b) to retire the $100,000 refunding bonds and to pay interest thereon, and also to retire and pay interest on $42,000 Court House and Jail Warrants and $54,000 Hospital Bonds.

Whether this is a valid levy no opinion is expressed, but assuming its validity, I see no reason why any surplus remaining therefrom after due satisfaction of the aforementioned claims against the Special Tax Fund may not be devoted to the purposes authorized by Section 215 of the Constitution, to-wit, payment of any debt or liability "created for the erection of necessary public buildings, bridges or roads."

To the Road and Bridge Commission of Cullman County, with respect to roads and bridges, have been delegated the authority, powers and jurisdiction formerly vested in the county governing body. Act No. 30, H. 152, approved February 5, 1939 (Local Acts, 1939, p. 13); **Dodson v. Beaird,** 237 Ala. 587, 187 So. 862.

I see no reason, therefore, why the governing body of Cullman County may not transfer to the said commissioner the annual surplus from the one-fourth of one per centum special tax for use by him in the construction of public roads, as provided in the resolution adcpted May 27, 1941, by the Board of Revenue, to which you refer, and as authorized by Section Six of Local Act No. 30, supra, p. 16. As heretofore stated, this opinion is based upon the assumption that the bonds of 1913 are not secured by pledge of any special fund or special tax.

If, however, in the resolution of the county governing body authorizing the 1913 bonds, of which $60,000 are still outstanding, any covenant or agreement was made with the holders or purchasers of said bonds whereby a pledge of the special road tax was created, then in my opinion transfer of any part of said tax to the Road and Bridge Commissioner is unauthorized as long as said bonds or any of them are outstanding and unpaid. Such transfer would impair the obligation of the county's contract. **Jefferson County v. Henry,** 204 Ala. 381, 86 So. 44; **First National Bank v. Terry Briggs & Co.,** 203 Ala. 401, 83 So. 170; **Board of Revenue v. Farson,** 197 Ala. 375, 72 So. 613; **Rhodes v. Marengo County Bank,** 205 Ala. 667, 88 So. 850; **Edwards v. Williamson,** 70 Ala. 145; **Adams v. Green,** 100 Ala. 218, 14 So. 54; **Slaughter v. Mobile,** 73 Ala. 134.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 25, 1942.

Hon. H. G. Beaird,
Road and Bridge Commissioner,
Cullman County,
Cullman, Alabama.

Cullman County—Road & Bridge Commissioner—Special Road Tax—Local Acts 1939, p. 13—Constitution 1901, §215—

Whether the governing body of Cullman County is authorized to transfer annually any surplus or part of the special road tax levied by it under Section 215 of the Constitution, after paying therefrom all claims against said tax for interest and principal of its outstanding bonds and warrants will depend on whether or not said special tax has been pledged as security for payment of said bonds or warrants or any of them.

In the absence of such pledge, such surplus may be paid to said Road and Bridge Commissioner for the construction of necessary public roads and bridges pursuant to Local Acts 1939, p. 13.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for official opinion bearing date of May 21, 1942, is as follows:

"As Road and Bridge Commissioner of Cullman County, Alabama, I desire to present to you the following question for your legal advice.

"My office was created under a Local Act, No. 152, passed by the Legislature of Alabama of 1939. Sometime ago it was my desire to undertake a road project for the building of the Cullman-Jasper highway as far as possible, and in doing so, the Board of Revenue of Cullman County, in the spirit of cooperation passed a Resolution, a copy of which is as follows:

"'TUESDAY, MAY 27, 1941.

"'The Board of Revenue met pursuant to adjournment with the following members present:

E. T. Knight, Chairman,

J. A. Coppock, Associate Member

G. W. McAfee, Associate Member

" 'The following resolution was offered by Mr. Coppock:

" 'WHEREAS, Local Act No. 152, passed by the Legislature of Alabama of 1939, requires that the Board of Revenue of Cullman County, Alabama, transfer each year to the Road & Bridge Commissioner of Cullman County, Alabama, the revenues accruing to Cullman County from the proceeds of 1 mill of the 2½ mills special Ad Valorem tax for public buildings, road and bridges, levied by Cullman County annually, and

" 'WHEREAS, it has been ascertained and determined that the principal and interest requirements of the present outstanding bond and warrant indebtedness of Cullman County to which the revenues from the proceeds of the said 2½ mills special Ad Valorem Tax has (sic) been previously pledged are substantially less than the amount of revenues received by the County from said Special Ad Valorem Tax, and

" 'WHEREAS, The Road & Bridge Commissioner of this County has deemed it necessary to make certain improvements to that part of the Cullman-Jasper road lying within the boundaries of Cullman County, the county's portion of the cost of which will be more than $40,000.00, and the Road & Bridge Commissioner having advised this Board that it will be impossible to finance the cost of said road improvement program of the County unless the said Road & Bridge Commissioner receives from this Board the proceeds from 1 Mill of the 2½ mills Special Ad Valorem Tax, or so much of the proceeds from the said 1 mill as shall remain after payment of principal and interest on that part of the County indebtedness to which the proceeds from the said Ad Valorem Tax has been previously pledged.

" 'NOW, THEREFORE, BE IT RESOLVED, that this Board transfer annually to the Road & Bridge Commissioner of Cullman County the proceeds from the revenues received by the County from 1 mill of the 2½ mill Special Ad Valorem Tax levied annually by the County, provided however, that should the principal and interest requirements on that part of the present outstanding indebtedness of Cullman County to which all or any part of the proceeds from the said 2½ mills tax has been previously pledged during any year exceed the amount of revenues accruing to the County from the remaining 1½ mills of the 2½ mill tax, then, in that event, the amount required to pay the said principal and interest charges on that part of the indebtedness of the County to which all or any part of the said 2½ mills tax has been previously pledged shall be used by the County to pay said principal and interest charges on said indebtedness, and only the remaining portion of the said tax shall be transferred to the Road & Bridge Commissoner.

" 'Mr. Coppock moved that the resolution be adopted, which motion was seconded by Mr. McAfee, and upon being put to a vote, the following voted aye: Mr. Coppock, Mr. McAfee and Mr. Knight.

" 'WHEREAS, the Chairman declared the motion duly adopted and it was so ordered.

Board of Revenue

E. T. Knight, Chairman.'

"After this was passed, I, as Commissioner, issued Order No. 6, which is as follows:

"'ORDER NO. 6

"'It is hereby ordered and decreed by the Road & Bridge Commissioner of Cullman County, as follows:

"'(1) In order that the road program of Cullman County can be carried forward as planned and that the cost of the Cullman-Jasper Road Project and the financing instant (sic) thereto can be liquidated without further deductions from the gasoline tax revenues accruing to the Commissioner there is hereby established a special sinking fund into which Fund shall be deposited annually, beginning with the year 1942, and including the year 1937 (sic), the amount remaining from the revenues received from the County Board of Revenue, from the proceeds of one (1) mill of the special 2½ mill ad valorem tax for road & bridge purposes, after first deducting the sum of $8,400.00 per year, which sum has to day been transferred and assigned from the gasoline tax revenues and which sum is the amount required to reimburse the Road & Bridge Commissioner for the payment of principal of and interest on the issue of $45,000 Cullman County 3% State Gasoline Tax Revenue warrants dated May 15, 1941 and maturing semi-annually on May 15, 1942, and including Nov. 15, 1947.

"'(2) Said moneys in said Sinking Fund shall be used only to make up any deficiency during any year in which the amount of revenue received by the Road & Bridge Commissioner from the Board of Revenue of Cullman County from the one (1) mill tax shall be less than the sum of $8,400.00 per year required to pay principal and interest on said issue of Gasoline tax revenue warrants as herein described.

"'(3) Any moneys remaining in said Sinking Fund after said warrants and interest have been paid shall be transferred to the regular road & bridge fund.

"'There being no further business to come before the meeting, the same was adjourned.

"'This 29 day of May, 1941.

H. B. Beaird,

Road & Bridge Commissioner'

"I am now advised by the Board of Revenue that they have been advised by the Auditor that they cannot transfer any of the surplus over and above the amount to meet the current principal and interest pay-

ments on outstanding bond and warrant indebtedness against the 1 mill of the 2½ mill Ad Valorem tax, as set out in the Resolution, to the Road & Bridge Commissioner, under the Resolution hereinbefore set out. I would, therefore, like to have an opinion from you advising whether the Board of Revenue can legally pay any of the surplus over and above the principal and interest requirements for the outstanding indebtedness pledged against these funds as they currently fall due. As I understand it, they were advised that no part of the surplus could be paid until the entire outstanding indebtedness was retired, and we want to know whether they can legally pay the surplus over and above what it takes to retire the current payments on said outstanding indebtedness."

From the foregoing and other papers which you have submitted for examination at my request, I understand you desire my opinion: Whether the governing body of Cullman County is authorized to pay to you annually two-fifths part ("1 mill of the 2½ mill Special Ad Valorem Tax levied annually by the county") of the special "one-fourth of one per centum" road, bridge and public building tax authorized under Section 215 of the Constitution, provided there is a surplus of said special tax over and above the amount of payments to be made each year for and on account of its bonds and interest thereon, and for payment of which the resolution of May 27, 1941, supra, recites "said 2½ mills Special Ad Valorem Tax has been previously pledged."

Answer to this question depends on whether said special tax has in fact been pledged to payment of the county's debt. I find that in 1913 the county issued $160,000 Road Bonds, due in 1943, of which $100,000 face amount were refunded by issue of $100,000 Refunding Road Bonds dated January 1, 1941, maturing $10,000 in each of the years 1945 to 1954, inclusive, with interest thereon meanwhile at 3½% per annum payable semi-annually. This leaves $60,000 of the bonds of 1913 outstanding and unpaid but maturing in 1943, as to which it seems the county has established a special fund of $67,500 for payment thereof and of accrued interest thereon.

Without a copy of the order or resolution of the county governing body authorizing the issue of the bonds of 1913, I am unable definitely to determine whether or not the special tax was then pledged to secure the bonds. A specimen bond submitted for examination fails to disclose such pledge, although the above quoted resolution of May 27, 1941, tends to indicate a pledge.

As for the $100,000 refunding bonds of 1941, they purport to be a general obligation of the county and to be "secured by a pledge of **so much as may be necessary** of the one-fourth of one per centum (½ of 1%) ad valorem tax authorized under the provisions of Section 215 of the Constitution of Alabama to be levied and collected annually by the county for the payment of any debt or liability created for the erection of necessary public buildings, bridges or roads." (Emphasis supplied.) This language, in my opinion, cannot be said to create any specific pledge; its only effect is to create a charge against the special tax for payment of the bonds and interest thereon, for enforcement of which the bondholders might resort to appropriate proceedings in court.

It also appears that the county has outstanding $55,000 3% Serial Hospital Bonds maturing in installments in each of the years 1941 to 1968, inclusive, and $45,000 6% Serial Jail Bonds maturing in installments in the years 1941 to 1951, inclusive, as to the terms or security for which I am not otherwise informed.

In its current levy of the special 2½ mill tax by order dated Feb. 2, 1942, the county governing body or Board of Revenue has not attempted to divide or apportion the levy as between the indebtedness aforementioned, so that it is impossible to determine what part of the levy is to be used for any particular issue of the four different issues of bonds. In what way the division of the fund from the special tax is to be made it is impossible to determine from the order itself making the levy. That would seem to be a matter or question addressing itself to the sound discretion and good judgment of the board.

If the outstanding $60,000 road bonds and the hospital and jail bonds are in fact secured by pledge of the special 2½ mill tax, a matter to be ascertained only from examination of the resolutions of the county board whereby they were authorized to be issued and sold, then, in my opinion, the county governing body is without authority to transfer or deliver to you any part of the proceeds of said tax, whether it be or not a surplus over and above the immediate requirements for payment of principal and interest on the bonds. Such a transfer would be an impairment of the county's contract obligation, although attempted to be accomplished by Local Act No. 152, approved February 15, 1939 (Local Acts, 1939, pp. 13, 16), Section Six of which provides that the County Road and Bridge funds of Cullman County shall include "a one mill road tax levied by the county under Section 215 of the Constitution of Alabama." See **Jefferson County v. Henry,** 204 Ala. 381, 86 So. 44; **First National Bank v. Terry, Briggs & Co.,** 203 Ala. 401, 83 So. 170; **Weaver v. Tidwell,** 228 Ala. 169, 153 So. 218; **Rhodes v. Marengo Co. Bank,** 203 Ala. 667, 88 So. 850; **Ramage Parks & Co. v. Folmar,** 214 Ala. 661, 108 So. 580.

If on the other hand an examination of the proceedings authorizing these four issues of bonds should disclose that they are, all of them, merely general obligation bonds of the county and do not purport to be secured by pledge of the special 2½ mill tax levied under Section 215 of the Constitution, then I see no objection to transfer of the surplus thereof as authorized by the resolution of May 27, 1941, and the local act creating your office.

Your "Order No. 6," made and entered May 29, 1941, which you have quoted in full, indicates that out of whatever funds may be transferred to you from the special tax you propose to deduct $8400 each year with which to pay principal and interest on $45,000 Cullman County 3% State Gasoline Tax Revenue warrants dated May 15, 1941, and maturing in semi-annual installments to and including Nov. 15, 1947. From your "Order No. 4" dated May 29, 1941, it appears that the warrants are not general obligations of the county, and that they are payable only out of a special fund known as "State Gasoline Tax Revenue Warrant Fund of 1941," which is created by monthly payments of $700 each month to The First National Bank of Mobile, as Trustee, out of State gasoline tax payable to Cullman County, for payment of the warrants, principal and interest, as they respectively mature.

This opinion is not to be construed as sanctioning or approving diversion of any part of the special tax levied under Section 215 of the Constitution to payment of said warrants or to reimbursement of said "State Gasoline Tax Revenue Warrant Fund of 1941" for money heretofore paid therefrom, for or on account of said warrants. As to the propriety of such application of any surplus of the special tax no opinion has been requested or is expressed.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 28, 1942.

Dr. Douglas L. Cannon,
Director of County Health Work,
Department of Public Health,
Montgomery, Alabama.

Public Health—Counties—Prostitutes—Quarantine—Venereal Disease—

1. County may appropriate money for quarantine station or detention hospital for persons afflicted with venereal disease.

2. Prostitutes afflicted with venereal disease may be confined in detention hospital by health officer.

3. Prostitutes may be prosecuted for vagrancy.

Opinion by Assistant Attorney General Flowers.

Dear Sir:

Your request for official opinion bearing date of August 3, 1942, is as follows:

"Section 271 of Title 22 declares prostitution to be a prolific source of syphilis and gonorrhea, that its suppression is a public health measure, and that every proper means shall be used to attain this end. One means is the establishment of a detention home where prostitutes may be confined for such time as seems to be necessary. Has a county the right to provide such place of detention in the interest of public health? The question is prompted by the desire of a county to convert an abandoned jail into a house of detention, and your opinion as to its right both to spend the money for the purpose and to confine prostitutes therein is respectfully sought."

The authority of a county governing body to appropriate money for the purpose of establishing and maintaining a quarantine station or detention hospital for the treatment of persons infected with syphilis, gonorrhea, chancroid, lymphogranuloma inguinale and granuloma venereum is found in Title 12, Section 12, Code of Alabama, 1940, where it is provided:

"§ 12. Authority of court.—The court (Of county commissioners) has authority: * * * 19. To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants, when requested so to do by the state board of health."

Title 22, Section 271, Code of Alabama 1940 provides:

"§ 271. Prostitution presumptive evidence of venereal infection; suppression of prostitution a public health measure.—Prostitution is hereby declared to be a prolific scurce of syphilis, gonorrhea, chancroid, lymphogranulamo inguinale and granuloma venereum, and the suppression of prostitution is declared to be a public health measure. All health officers shall cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the suppression of prostitution. It is further declared that prostitution is presumptive evidence of venereal disease infection; and whenever or wherever apprehended, prostitutes and other persons whom the county health officer has probable cause to believe infected with a venereal disease shall be examined for said infection by the health officer or his assistant."

Title 22, Section 262, Code of Alabama, 1940, provides:

"§ 262. Physicians and others required to report cases of venereal diseases to the county health officer.—Any physician who makes a diagnosis or treats a case of syphilis, gonorrhea, chancroid, lymphogranuloma inguinale, or granuloma venereum, and the superintendent or manager of a hospital or dispensary or penal or other institution in which there is a case of venereal disease, shall report such a case immediately in writing to the county health officer, stating the patient's name, or initials, the age, color, sex, marital status, address, the stage of the disease and occupation of such diseased person, the date, as near as it can be arrived at, of the onset of the disease and the probable source of infection, and the report shall be enclosed in a sealed envelope and sent to the county health officer."

In view of the foregoing statutes I am of the opinion that the proposed expenditure is lawful as a proper function of the county governing body under the county public health powers.

A careful consideration must be given to the manner in which the proposed institution is to be operated. Title 22, Section 264, Code of Alabama, 1940 provides:

"§ 264. Persons required to be treated.—The county health officer shall require all persons infected with a venereal disease to report for treatment to a reputable physician and continue treatment until such

disease, in the judgment of the attending physician, is no longer communicable or a source of danger to public health. When such infected persons are unable to pay the attending physician's fees and in his judgment are indigent, they shall submit to treatment at public expense until discharged by the physician in charge of the clinic. Whenever in the judgment of the county health officer such a course is necessary to protect the public health, persons infected with venereal disease shall be isolated or quarantined. But whenever a person or persons infected with venereal disease shall refuse to take and continue treatment, as provided in this section such person or persons may be committed to the county or city jail on order of the county health officer or physician in charge of a venereal disease clinic, and kept there for treatment until no longer a source of danger to the public health. Cost of feeding and keeping such person or persons shall be at the expense of the city in the event such person or persons reside in an incorporated municipality; otherwise, the same shall be at the expense of the county."

Title 22, Section 268, Code of Alabama, 1940, provides:

"§ 268. County health officer takes steps to prevent spread of disease. —Upon receipt of a report of a case of venereal disease, the county health officer, or the state health officer, shall institute such measures for the protection of other persons from infection by such venereally diseased person as said health officer is empowered to use to prevent the spread of other contagious, infectious or communicable diseases."

In these two latter statutes, Sections 264 and 268, supra, is found the county health officer's authority to isolate and quarantine persons infected with venereal diseases, whenever in his judgment, such a course is necessary to protect the public health. When such person, or persons, refuse to submit to treatment, the county health officer is given the authority to commit him to the county jail on the order of the county health officer or physician in charge of the venereal disease clinic, and such person, or persons, may be kept there for treatment until no longer a source of danger to the public health.

In the case of **Dowling v. Harden,** 18 Ala. App. 63, 88 So. 217, the Court of Appeals, through Judge Samford, had the following to say:

"Samford, J. (1) The right of the Legislature, under the police power to establish quarantine, to prevent the spread of contagion and infection, is too well established by adjudication and grounded in common sense to be questioned or doubted, and governmental agencies, when authorized, may enact and enforce all reasonable ordinances necessary to attain the desired results. To that end persons affected or reasonably suspected of being affected with diseases known to be infectious or contagious may be segregated, or isolated from the public, either in their homes, or in hospitals or camps prepared for that purpose, until such time as that they will cease to be a menace to the public, and prisoners under legal charges of crime may be, when so affected, segregated from their fellows. When so quarantined, they are subject to such reasonable examination as is necessary to satisfy the health authorities that their release will not endanger the public.

"(2) But persons affected with disease are not for that reason criminals, and jails and penitentiaries are not made or designated for their detention. * * *

"(3) The health officer, under the facts, was authorized to consider petitioner within the class of those reasonably suspected of being sources of infection, as provided by Section 17, subd. 15, of the Acts 1919, p. 936, and to be dealt with as provided by that section of the act and the act of 1903, supra. But neither the one or the other authorized the health officer to confine or order petitioner's confinement in jail. Such confinement would be illegal. * * *"

However, the Harden case was decided prior to the enactment of the health laws upon which this opinion is based. It was concerned with the construction of the local law applicable to Jefferson County which was in effect, at the time. The provisions of the law here under consideration, and the local law which gave rise to the Harden Case, are not the same, and this opinion is, for that reason, not in conflict with the decision in the Harden case.

In the case of **Rock v. Carney,** 216 Mich. 280; 185 N.W. 798, 22 A. L. R. 1178, the court held:

"Our state has not been alone in dealing with the question of the control of venereal diseases. With the advent of the World War and the congregation of a large number of young men in military camps, the necessity of control of venereal diseases forced itself upon the attention of the health officers of other states, and the courts of some of these other states have been called upon to determine the power of such boards in the premises. So far as I have been able to ascertain the following are all the cases dealing with the specific questions of power to examine and quarantine those infected with venereal diseases, which have arisen from this situation: Wragg v. Griffin, 185 Iowa, 243, 2 A. L. R. 1327, 170 N. W. 400, 18 N.C.C.A. 76; Re McGee, 105 Kan. 574, 8 A. L. R. 831, 185 Pac. 14; State ex rel McBride v. Superior Ct. 103 Wash. 409, 174 Pac. 973; Ex parte Hardcastle, 84 Tex. Crim. Rep. 463, 2 A. L. R. 1539, 208 S. W. 531; Ex parte Brooks, 85 Tex. Crim. Rep. 397, 212 S. W. 956; Re Johnson, 40 Cal. App. 242, 180 Pac. 644, Re Milstead, 44 Cal. 239, 186 Pac. 170; Re Travers, ... Cal. App. ....., 192, Pac. 454; Ex parte Shepard, ... Cal. App. ....., 195 Pac. 1077; Dowling v. Harden, ... Ala. App. ....., 88 So. 217; Brown v. Manning, 103 Neb. 540, 172 N. W. 522.

* * * * * * *

"An examination of the authorities, a consideration of our own statutes, having in mind the rule that they should be liberally construed in order that the aim intended, i. e., the good of the public health, should be attained, leads me irresistibly to the conclusion that we should hold: That the state board of health has validly determined that gonorrhea and syphilis are communicable diseases; that the power exists in the boards of health acting through their respective health officers to quarantine person infected with these diseases either in their homes, or in detention hospitals, such detention to continue so long as the diseases

are in their infectious state; and that, subject to what will now be considered, such health officer has the power to make such examination as the nature of the disease requires to determine its presence."

It is my opinion that the statute authorizes the public health officer to isolate, quarantine or detain any person who has or is reasonably suspected of having those venereal diseases enumerated in Section 271, supra. It is apparent that the motive behind the enactment of such a statute is the protection of the public health and prevention of the spread of contagion. I am also of the opinion that under the statute the health officer is justified in suspecting a prostitute of infection with disease.

A prostitute may be prosecuted in a court of competent jurisdiction and convicted under a charge of vagrancy. Title 14, Section 437, Code of Alabama, 1940 provides:

"The following described persons are vagrants.— * * * 9. Any person who is a prostitute."

I am of the opinion that the proper method of confining one accused of being a prostitute is in a proper conviction by a competent tribunal under a charge of vagrancy.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 28, 1942.

Mrs. Edna N. Dunn,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Trailers—Semi-Trailers—License—

1. Trailers of any kind and description used by farmers exclusively for handling their farm products are exempt from the payment of license imposed by Section 703, Title 51, Code of 1940.

2. An occasional use by such farmer of such trailer for the purpose of hauling wood produced on his farm would not deprive him of such exemption.

Opinion by Assistant Attorney General McQueen.

Dear Madam:

Your request for official opinion, bearing date of August 22, 1942, is as follows:

"Please give us an official opinion on the following questions.

"'Does the law require an individual under Section 703 of the Revenue Laws of Alabama, 1941, to purchase a T-1 tag for a small trailer attached to a one-half ton pick-up truck with trailer well supported by two wheels and when the load does not exceed 2000# for the purpose of hauling farm produce.'

"'Also whether or not one is required to purchase a T-1 tag for a trailer to be attached to a one-half ton pick-up truck where the same is used for hauling wood. Said capacity not to exceed 2000#'"

I assume that the individuals to whom you refer in the above request are farmers and the farm products hauled by them are grown and produced by such farmers.

Based upon this assumption, my answer to your first inquiry is in the negative.

Section 703, Title 51 of the Code of 1940 provides, in pertinent part as follows:

"§ 703. Basis of tax for trailers and semi-trailers.—* * *All trailers of any kind and description used by persons exclusively for the handling of farm products raised by said farmers are exempted from the paying of said license on said trailers."

It is to be noted from the above-quoted excerpt that trailers of any kind and description used exclusively by farmers for hauling their farm products to and from market, or hauling such farm products in the manner are exempt from the license imposed by said Section. Quarterly Report, Attorney General, Vol. IX, page 126.

Your second inquiry presents a question of fact, and each individual case must be judged by the facts upon which it is based.

In the case of **Gunn v. Mayor, etc. of Macon**, 10 S. E. 972, the Supreme Court of Georgia considered the question as to whether or not one Gunn was engaged in business within the city of Macon, within the meaning of a statute imposing a license upon those persons engaged in business within such city. Gunn was a farmer who was clearing his property for cultivation and hauling the wood cut from his land to Macon and there selling it. The question presented in this case was whether or not Gunn was engaged in a business within the city of Macon, for which a license was required, and the court based its conclusion on facts similar to those here presented. I quote from said case as follows:

"If it had been shown that Gunn had a woodyard either within or outside the city limits for the purpose of dealing in wood, and that he carried on a regular business of selling wood in the city, (as in the Case of Davis, supra) then, in our opinion, he would be subject to the license tax. But as he carries on no regular business in the city, but simply sends in his surplus wood to the city for sale in his own wagons, we do not think, under the facts disclosed by this record, that the city authorities had any right or power to require him to pay a license upon his vehicles so engaged in bringing in and selling the products of his farm within the city."

Powell v. Industrial Commission of Wisconsin et al., 213 N. W. 651; **Pratt v. City of Macon,** 134 S. E. 191; **State ex rel. Britton, Sheriff v. Hayes,** 78 So. 143, 143 La. 39.

Based upon the above cases, it is my judgment that if a farmer used his trucks occasionally to haul wood, then this occasional use would not deprive him of the exemption granted by Section 703, supra. On the other hand, if such farmer used his truck solely for the purpose of hauling lumber, then, in my judgment, he would waive, or deprive himself of the exemption granted by Section 703, supra.

As stated hereinabove, your second inquiry presents a question of fact, and this question of fact is to be determined by you, based upon the rules hereinabove set forth.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 28, 1942.

Hon. O. L. Andrews,
Clerk, Circuit Court,
Tenth Judicial Circuit,
Birmingham, Alabama.

A lake not wholly on the premises of an individual is considered public waters within the meaning of Title 8, Section 68, Code of 1940.

It is unlawful to fish in public waters with rod and reel or artificial bait without license.

Opinion by Assistant Attorney General Harwood.

Dear Sir:

Your letter of August 26, 1942, in which you request an official opinion, is as follows:

"I wish you would give me an opinion on whether or not a prosecution would lie for fishing without a permit under Title 8, Sec. 69 Code of 1940 if a lake is not wholly on the premises of another person, or for example, if three persons owned an acre each in a three acre lake. Of course, the owners have an ample remedy in the trespass law and larceny of fish law."

No cases bearing on this question have been found. Two statutes, however, seem to make the answer fairly clear.

Section 38 of Title 8, Code of 1940, provides:

"§38. License for fishing with rod and reel and with artificial bait.—No resident of this state over the age of sixteen years shall take, catch, kill, or attempt to take, catch, or kill any fish in any of the public waters of this state in which fresh water fish appear by angling with rod and reel, commonly called fly rod, bait casting rod, or trolling rod, or by the use of any artificial bait, fly, or lure without first procuring a fishing license and paying therefor the sum of one dollar, and such fishing license shall not be transferable and it shall be unlawful to borrow or lend any such fishing license. * * *"

Section 68 of Title 8, defining public and private waters, reads as follows:

"§68. Public and private waters.—All waters of this state are hereby declared to be public waters if such waters of any river, creek, lake, brook, bayou, bay, channel, canal, lagoon or other body, traverses, bounds, flows upon or through, or touches lands title to which is held by more than one person, firm or corporation. Any water impounded by the construction of any lock, dam or other devices used for impounding water, and placed across the channel of any public waters, as defined in this section are hereby declared to be public waters. Private waters are for the purpose of this chapter defined as any body of water wholly on lands held in fee or in trust, or under lease, by any one person, firm or corporation; provided, however, that this section shall not apply to a branch or other body of running water, which has at its normal stage of flow insufficient volume of water to maintain fish protected by the provisions of this chapter. * * *"

In my opinion, the lake described in your question would fall under the category of public waters, as defined in Section 68 above, and any person fishing therein with rod and reel or with artificial bait without having first procured a license would be violating the law.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

August 31, 1942.

Hon. B. P. Singleton,
Chief Examiner of Accounts,
Capitol.

Fees and Costs—Fees of Clerk, Circuit Court, in Criminal Cases—

1. The Local Act of the Legislature of 1890-91, page 417, fixing the fees of the Clerk of the Circuit Court of Hale County, was repealed by the General Acts of 1931, page 331.

2. The Code of 1940, Title 11, Sections 79 and 89, prescribe the fees to be charged and paid in criminal cases to the clerks of the circuit courts of this State.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for official opinion, bearing date of August 24, 1942, is as follows:

"Please refer to Local Act 189, page 417, Local Acts of 1890-91 and to General Act 280, page 331, General Acts of 1931 and advise me in answer to the following:

"Inasmuch as the scale of fees provided for the Circuit Clerk of Hale County differs from and is in excess of those allowed to the Circuit Clerks under the General Law, is the Local Act of 1890-91 still in force and effect?

"I have been advised that your office rendered an opinion in 1932 to Honorable J. H. Hard, State Comptroller, holding that the Local Acts of 1890-91 was in full force and effect, in spite of the 1931 General Law. However, I am unable to find this particular opinion to Mr. Hard and it is my understanding that the State Supreme Court has held that any Local Act or General Act with local application providing a different schedule of costs and/or fees for a Circuit Clerk is unconstitutional and therefore null and void."

Whether the Local Act of the Legislature of 1890-91, page 417, is still in force presents the sole legal proposition for consideration in this opinion.

This act was approved February 6, 1891. Its title reads, "To fix the fees of the Circuit Clerk of Hale County." However, the body of the enactment directs that only the clerk's fees in criminal cases are prescribed and in specific language denies any purpose to affect the clerk's fees in civil cases.

At the time this local act was passed the Alabama Code of 1886 was in force. Section 4869 of this Code fixed the fees of the clerks of the circuit

courts in criminal cases for services therein named in stated amounts. The section catalogued twenty items for which fees were allowed. The local act here under consideration fixed the fees of the Clerk of the Circuit Court of Hal County for the same identical services but materially increased the fees in all the items except five and left these five the same as in the code section, supra. The identical provisions of Section 4869 of the Code of 1886 were recodified in all the codes, including the Code of 1923. The provisions appear as Section 3739 of this last code.

During the time the Code of 1907 was in force the Legislature created the Court of Appeals. The Code of 1923 failed to fix fees for the clerk of the circuit court for making records for appeals to the Court of Appeals in criminal cases and certificate for the same. On June 18, 1931, the Legislature took care of this omission by amending Section 3739 of the Code of 1923 by fixing fee for the clerks of the circuit courts for making records and certificates thereof on appeals to the Court of Appeals. General Acts, 1931, page 331. This act went further than merely providing for services of the circuit clerks on appeals to the Court of Appeals. Section 2 of the act provides:

> "That all laws or parts of laws, whether special, general or local, in conflict with this act are hereby repealed."

The title to this act is as follows:

> "To amend Section 3739 of the Code of Alabama of 1923."

The act provides that Section 3739 "be and the same is hereby amended so as to read as follows: * * *." This language clearly shows that the entire act is to become a substitute for Section 3739 of the Code of 1923. 25 R. C. L. (1st ed.) 907, Section 159.

It is evident from Section 2 of this act that the Legislature intended to do more than supply provisions for clerk fees on appeals to the Court of Appeals. There are many rules to be observed and applied in the construction of a statute to ascertain the intention of the Legislature. One applicable here is that we may take into consideration the history which led up to its enactment; the surrounding circumstances and the ends intended to be accomplished; and the prior condition of the law as well as the general powers and the course of legislation. **Powell v. State,** 142 Ala. 80, 39 So. 164; **State v. Board of Revenue of Jefferson County,** 201 Ala. 568, 78 So. 964; **McCreless v. Tennessee Valley Bank,** 208 Ala. 414, 94 So. 722; **Abramson v. Hard,** 229 Ala. 2, 155 So. 510; **American Bakeries Co. v. City of Opelika,** 229 Ala. 388, 157 So. 206; **Davis v. State,** 16 Ala. App. 397, 78 So. 313.

Applying these principles, it is of controlling importance to note that the Local Act of 1890-91 here involved was passed at a time when the Legislature was authorized to pass such enactments, and the history of the times shows that this privilege was so abused that the framers of the Constitution undertook to remedy this abuse by stripping the Legislature of such powers. Constitution, 1901, Sections 96, 104(24) and 105. It is a logical conclusion that Section 2 of the act of 1931, supra, was inserted for the express purpose

of making the law of the clerks' fees conform to these well-known constitutional provisions. However, it is not necessary to stand on these authorized conclusions. The language of Section 2 of the act of 1931, supra, is clear and we must presume the Legislature had a purpose by the use of this language. It could mean nothing different from what is says, that all laws, whether special, general or local, in conflict with the provisions of the act are repealed. The act of 1890-91, under review, was a local law and its provisions are in open conflict with the act of 1931. It must follow that this latter act became the law controlling the fees of the circuit court clerks in criminal cases. The schedule of fees fixed by it has been brought into the Code of 1940, Title 11, Section 89. Section 79 of this same Title provides, "the fees prescribed in this code shall be the only fees that can be collected by any officer."

My conclusion is that the local act fixing the clerk's fees in Hale County has long since been repealed. This conclusion is in entire accord with, and supported by, the Supreme Court in the case of **Barnes, Court Clerk v. State ex rel. Tate,** 230 Ala. 596, 162 So. 406.

It is my information that the Clerk of the Circuit Court of Hale County has been following an opinion of one of my predecessors to the effect that the 1890-91 Local Act was controlling. Because of this fact, I do not think that this opinion should have any retroactive effect.

Yours very truly,

THOMAS S. LAWSON,
Attorney General.

September 2, 1942.

Hon. B. P. Singleton,
Chief Examiner of Accounts,
Capitol.

Act No. 25, S. 39 (Local Acts, 1932, p. 7)—

1. Solicitor's fee should be taxed and collected in the Court of Common Pleas of Selma.

2. Present Sheriff of Dallas County entitled to receive sum of $50 per month for attendance on Court of Common Pleas of Selma, in addition to fees earned.

3. Sheriff of Dallas County is to be paid on salary basis after the expiration of the present term of office.

Opinion by Assistant Attorney General Harwood.

Dear Sir:

Your letter of August 28, 1942, in which you request an official opinion, is as follows:

"Please refer to Act 25, Page 7, Local Acts of 1932 Extra Session, and particularly to Sections 4, 8 and 11 of this Act and advise me in answer to the following:

"1) Should there be a solicitor fee charged in this Court in line with solicitor's fees charged in County Courts?

"2) Is the Sheriff of Dallas County entitled to receive a flat sum of $50.00 per month for **all** of his services in connection with the Court of Common Pleas of Selma, whether he actually earned more or less than $50.00 in any given month?

"3) If your answer to question two is in the affirmative, what should become of the Sheriff's fees collected by said Court on account of services performed by the Sheriff?

"4) If your answer to question two is in the negative, should the Sheriff of Dallas County get all of the fees he may earn each month in connection with services performed for the Court of Common Pleas of Selma, and in addition thereto be paid the sum of $50.00 per month out of the General Fund of Dallas County?"

As you already know, having called the attention of this office to the opinion since your letter of August 28, 1942, was written, question No. 1 above is answered in an opinion of this office, dated July 21, 1941, found in Quarterly Report of Attorney General, Volume XXIV, page 73.

Insofar as question No. 2 is concerned, it is my opinion that the $50 per month, provided for by Section 11 of the Act creating the Court of Common Pleas of Selma, is additional to and supplementary of the sheriff's fees that may accrue. I call your attention to that portion of Section 8 of the "Court Act," which reads as follows:

"Section 8. It shall be the duty of the judge of said Court to keep a docket of all the cases brought before this court such as is now required by law to be kept by all justices of the peace. The judge shall have authority to issue all necessary summons upon complaint being filed in said court, and all other process which justices of the peace are required or empowered by law to issue. He shall have authority to swear witnesses at the trial of all cases in said court. It shall be the duty of said judge to tax and collect in each case the same costs and fees for the services of judge, sheriff and witnesses as are provided under the laws of Alabama for justices of the peace and sheriffs, and witnesses in such courts. The sheriff's fee collected by said court shall be paid to the sheriff on the first Monday of each month. *** "

Section 11 of the act is as follows:

"Section 11. That the Sheriff of Dallas County shall be required to attend the Court hereby established, and for services rendered said court, as required by law, shall be paid the sum of $50.00 per month to be paid out of the General Fund of Dallas County by warrant drawn by the Probate Judge of said County upon the County Treasury; and that the Deputy Solicitor of said County is hereby required to represent the State in all criminal causes in said court, and for his services therein shall receive a salary of $50.00 per month payable out of the General Fund of said County by warrant drawn by the Probate Judge on said County Treasury."

In the absence of any statutory provision, the Sheriff of Dallas County was not under any duty to attend this court. Title 54, Section 3, Code of 1940.

Article 17, Section 281 of the Alabama Constitution provides:

"The salary, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

To the same effect is Article 4, Section 68 of the Alabama Constitution:

"The legislature shall have no power to grant, or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant, any extra compensation, fee or allowance to any public officer, servant or employee, agent or contractor, after service shall have been rendered or contract made; nor to increase or decrease the fees and compensation of such officers, during their terms of office; nor shall any officer of the State bind the State to the payment of any sum of money, but by authority of law; provided, this section shall not apply to allowances made by commissioners' courts, or boards of revenue to county officers for ex-officio services, nor prevent the legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring or guarding prisoners."

Judicial interpretations of these sections have made it clear that where additional duties are imposed upon an official he may be awarded extra compensation without violating these constitutional provisions. **Tayloe et al. v. Davis et al.,** 212 Ala. 282.

Since Section 8 of the act creating the court specifically provides that the Sheriff shall receive the fees as provided under the laws of Alabama and provisions of the act itself for services in the newly created court, and that same shall be paid to the Sheriff on the first Monday of each month, it becomes clear that Section 11 of the same act providing for the payment of $50 for the attendance by the Sheriff upon the court was to compensate him additionally for new duties imposed upon him. This conclusion becomes

fortified when it is remembered that the Legislature could not constitutionally have increased the fees to which the Sheriff was entitled at the time of his election to office, which would be the possible result if this bill be interpreted to limit the Sheriff's compensation to the $50 monthly payment.

Under the terms of an amendment to the Constitution which was proclaimed ratified on November 15, 1940, the Sheriff of Dallas County was placed on a salary basis beginning with the term of office commencing in January, 1943. Therefore, the conclusion reached in answer to your second inquiry will not be applicable after the expiration of the term of office which began in January, 1939.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 2, 1942.

Hon. Roscoe Maddox,
Superintendent of Education,
Chilton County,
Clanton, Alabama.

Schools—

County Boards of Education cannot expend funds for purchasing uniforms for high school or public school bands.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your letter of August 26, 1942, in which you request an official opinion, is as follows:

"I should like to request your opinion on the following:

"'May a county board of education authorize the expenditure of public school funds in payment for uniforms for a county high school or public school band?'"

In my opinion, the County Board of Education may not legally expend public school funds for the purpose of purchasing band uniforms for a high school or public school band.

It is true that this office perhaps has already held that school funds can be used for the purpose of purchasing musical instruments and athletic

equipment, however, I do not believe that the holdings should be extended to permit the purchase of band uniforms.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 4, 1942.

Hon. H. B. Pearson,
Register, Circuit Court,
Randolph County,
Wedowee, Alabama.

Registers—Commissions—Alimony—

Registers entitled to commissions set out in Title 11, Section 27, Code of 1940 for receiving, keeping and paying out alimony.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of September 1, 1942, is as follows:

"Will you please advise me if Registers are entitled to deduct 5% for the receiving and disbusing Alimony money.

"I have a case that I have been receiving and disbursing since my appointment about two months ago, without deducting the commission, as I did not know whether or not I had the authority to do so."

My answer to your inquiry is in the negative.

I assume that the 5% commission referred to in your letter is the commission set out in Title 11, Section 22, Code of 1940. It is to be noted that this commission is only allowed for monies collected by clerks and registers for the State of Alabama. Certain it is, that it could not be said that the collection of alimony would be a collection for the State of Alabama.

However, your attention is called to Title 11, Section 27, Code of 1940, which section sets out the specific fees to which registers in chancery are entitled.

This section reads in pertinent part as follows:

"§ 27. Fees allowed to registers.— *** For receiving, keeping, and paying out or distributing money, other than that arising from sales, on the first one thousand dollars, one percent; on all over one thousand dollars and not over five thousand dollars, three-fourths of one percent; on all over five thousand dollars, not exceeding ten thousand dollars one-half of one percent; and all over ten thousand dollars, one-fourth of one percent; *** "

It is my opinion that the receiving and disbursing of alimony by a register is receiving, keeping and paying out or distributing money within the meaning of the above quoted section. Cf. Biennial Report of the Attorney General, 1934-36, page 459.

It is my opinion, therefore, that upon receiving and disbursing alimony, you will be entitled to the following fees: "On the first one thousand dollars, one percent; on all over one thousand dollars and not over five thousand dollars, three-fourths of one percent; on all over five thousand dollars, not exceeding ten thousand dollars one-half of one percent; and on all over ten thousand dollars, one-fourth of one percent."

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 5, 1942.

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Phenix City, Alabama.

1. A certified copy of a marriage certificate, issued by a probate judge, must be in literal conformance with the original.

2. Probate Judge has no authority to amend record of marriage certificate by incorporating correct statement of fact or facts not obtained from writings on file in his office, unless the error is apparent and correctible from the record itself.

Opinion by Assistant Attorney General Simmons.

Dear Sir:

Your request for official opinion, bearing date of August 26, 1942, is as follows:

"I have had several requests from soldiers for certified marriage certificates, to be used in securing allotments from the Government for their families. Some of them say that there is a mistake in the name as shown

on our records, but most of them admit that they made the mistake when giving us the name.

"We always make the applicants spell out the name in order to get same right, but you would be surprised at how many do not know their own name, much less that of the girl.

"I have before me a letter in which the writer states that our record has his wife's name as Opal Lee when it should be Opie Lee.

"Please advise me what to do in a case like this, he says he cannot get an allotment unless the certificate shows her name as Opie Lee."

It is my opinion that any certified copy of a marriage certificate on file in your office must be in literal conformance with the original.

Section 386, Title 7, Code of 1940, provides as follows:

"§386. Registers of marriages, births, and deaths, as evidence.—Registers of marriages, births, and deaths, kept in pursuance of law, or any rule of a church or religious society, may be certified by the custodian thereof; and when so certified, are presumptive evidence of the facts therein stated, as well as of the law or rule in pursuance of which such registry was made, and of the authority to certify the same."

It is not incumbent upon you, nor do you have authority, to correct an error in the original by issuing a certified copy which deviates in name, spelling, or fact from the original.

I am constrained to hold that you have no authority to amend the record of the marriage certificate by incorporating in the record a correct statement of fact or facts which you obtain from sources outside the files of your office and not apparent on the record itself. The record cannot be corrected to reflect a statement of fact or facts not given you when the original certificate was issued. **In re: Bjune,** 178 N. Y. S. 498, 109 Misc. Rep. 247 (1919); **Sunseri v. Cassagne,** 195 La. 19, 196 So. 7; **People v. Hartquist,** 305 Ill. 228, 146 N. E. 140-41.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 8, 1942.

Hon. A. B. Jeffries, Member,
Board of Revenue and Road Commissioners,
Mobile County,
Mobile, Alabama.

1. Board of Revenue and Road Commissioners of Mobile County may, if it deems it necessary, purchase an automobile to be used by county agent in performing his official duties and pay for same out of the general fund of the county.

2. County governing body authorized to purchase automobile to be used by county agent out of the sales tax fund of the county only if the proper authorities of Alabama or Federal Agricultural Extension Service hold the same to be within the meaning of the term "extension services" as that term is used in Section 784, of Title 51, Code of 1940.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your request for official opinion, bearing date of September 2, 1942, is as follows:

"I wish to ask you two questions:

"1. Can the Mobile County Board of Revenue and Road Commissioners legally purchase a car from their general funds for the use of the county agent?

"2. Can the Mobile County Board of Revenue and Road Commissioners purchase such a car with the luxury tax receipts?

"I understand that Jefferson and Montgomery Counties both provide cars for their agents, but I don't know whether they work under the same laws that Mobile County does."

In answer to your first question, I call attention to Subdivision 17 of Section 12, Code of 1940, which provides as follows:

"Where the state or federal authorities have taken up the works of farm demonstration, or the organization of farm life clubs for the promotion of agriculture, **to appropriate for aiding in such work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary.**" (Emphasis supplied)

In view of the above authority, it is my opinion that the Board of Revenue and Road Commissioners of Mobile County may, if it deems it necessary, purchase an automobile to be used by the county agent in performing his

official duties and pay for the same out of the general fund of the county. Cf. Quarterly Report of the Attorney General, Vol. X, page 132, and Quarterly Report of the Attorney General, Vol. XXVI, page 121.

Answering your second inquiry, attention is called to Section 784, Title 51, Code of 1940, the pertinent part of which is as follows:

> " *** provided that the funds divided and distributed to the several counties of the state as hereinabove provided for shall be used exclusively for full-time health service in cooperation with the state board of health or the federal government; for public welfare in cooperation with the state department of public welfare or the federal government; and for extension services in cooperation with the Alabama agricultural extension service or the federal government, at the discretion of the commissioners court, boards of revenue, or other governing bodies of the several counties of the state. The amount of the proceeds of all taxes levied by this article remaining after the payment of the expenses of administration and enforcement and the replacement in the several funds of the amount lost by any homestead exemptions and the distribution to the sixty-seven counties as herein provided shall be paid into the Alabama special educational trust fund."

In construing this provision of the sales tax act the Supreme Court of Alabama in the case of **Tuscaloosa County v. Chester Walker, Judge of Probate,** 235 Ala. 293, 178 So. 548, held that it was the legislative intent that the state agencies mentioned therein, and not the various county governing bodies, were to exercise their judgment as to whether or not the expenditures by the various counties from the sales tax fund were within the meaning of the terms "public health," "public welfare," and "agricultural extension services." Therefore, the purchase price of an automobile to be used by the county agent in performing his official duties may be paid from the sales tax fund of Mobile County only provided the same is held by the proper authorities of the Alabama or Federal Extension Service to be within the meaning of the term "extension services" as that term is used in Section 784, supra. Quarterly Report of Attorney General, Vol. X, page 132.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 8, 1942.

Hon. George H. Gamble,
Sheriff, Henry County,
Abbeville, Alabama.

Officers—Sheriffs—Contracts—Jail Janitors—Title 41, Section 211, Code of 1940.

Sheriff cannot contract with county to perform the work of jail janitor.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for an official opinion, bearing date of September 3, 1942, is as follows:

"The County Commissioners have been paying a Jail Janitor $40.00 a month for work in and about the County Jail.

"The labor situation has become such that I find it just about impossible to secure the services of a Jail Janitor.

"Please advise me whether the County Commissioners could legally pay me the sum of $40.00 a month for performing this service. That is, please advise whether, in your opinion, I could act both as Sheriff and Jail Janitor at one and the same time."

It is my opinion that this inquiry should be answered in the negative.

I wish to call your attention to Title 41, Section 211, Code of 1940, which section is as follows:

"§ 211. County officers interested in county contracts.—Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract, for work or services of the county, or is employed in any way under such contract, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers; but this section shall not be construed to prevent the court of county commissioners, board of revenue, county commission or other governing body of the county from employing as attorney to such governing body an attorney who holds an office which does not preclude him from practicing law and does not re-

quire his full time and for which, as such officer, he is compensated on a per diem basis, nor shall it be construed to prevent the treasurer in lieu of a county depository from being employed as clerk to the court of county commissioners, board of revenue, county commission or other governing body of the county."

This section is penal in nature, and must be strictly construed. Quarterly Report of the Attorney General, Volume XVI, page 208.

It will be observed that the above quoted section, supra, prohibits any sheriff **from taking any contract for work or service of the county and from being employed in any way under such contract.**

The county governing body is charged with the duty of providing adequate janitor service for the jail. Title 45, Section 172, Code of 1940. Biennial Report of the Attorney General, 1936-38, page 551. In my opinion, such employment is a contract for work or service to be rendered for the county within the meaning of Title 41, Section 211, Code of 1940, supra, whether such contract is in writing or is verbal. Cf. Quarterly Report of the Attorney General, Volume XXVII, page 46. Biennial Report of the Attorney General, 1936-38, page 420. **Garrett v. State,** 28 Ala. App. 78, 178 So. 825.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 29, 1942.

Hon. H. H. Kinney,
Judge of Probate,
Cullman County,
Cullman, Alabama.

Mass Meetings or Beat Meetings—Time for Holding—

A mass meeting held by a political party for the purpose of nominating a candidate or candidates for public office to be voted for in the general election held at a time different from that described by Article 2, Chapter 2, Title 17, Code of 1940, is an illegal meeting, and the action taken at such meeting is void.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your letter of September 17, 1942, in which you request an official opinion, is as follows:

"Title 17, Article 2, Sections 413 through 416, 1940 Code of Alabama, provides as follows:

"413. (674) MASS MEETINGS OR BEAT MEETINGS HELD.—When any political party shall desire to hold any mass meeting, beat meeting, or other meeting of the voters of such party for the purpose of nominating any candidate or candidates for public office, to be voted for in a general election in Alabama or for the purpose of selecting delegates, or other representatives to any convention which may select such candidates for public office, or when any such party shall desire to hold such mass meeting, beat meeting, or other meeting of the voters of such party for the purpose of selecting committeemen, representatives or other party officers of such party; all of such meetings shall be held at the times and places set out in the succeeding section, and at no other times or places. (1915, p. 622)

"414. (675) WHEN AND WHERE SUCH MEETINGS HELD.—In presidential election years, such meetings shall be held in a hall, room or open place at, or in the immediate vicinity of the voting place of the respective precinct or voting district, and on the second Tuesday in May. In other even numbered years, such meetings shall be held at such places on the second Tuesday in August. The general public is privileged to attend such meetings, but not to participate. (Ib.)

"415. (676) SPECIAL ELECTIONS AND VACANCIES WHICH ARE EXCEPTED FROM ARTICLE.—This article shall not apply where a special election is called for the election of a public officer, for which said party has no candidate, or where by death, resignation, or otherwise, a vacancy has occurred in any nomination made by such party; and this article shall not apply to municipal elections. (Ib.)

"416. (3957) MASS MEETING, BEAT MEETING, UNLAWFULLY HELD.—Any person or persons who shall hold, attend or participate in the holding of any meeting for the purpose of nominating a candidate or candidates for public office, to be voted for at any general election in Alabama, or for the purpose of electing delegates or other representatives to any convention which may select such candidates for public office, at any time or place other than as provided for in article 2 of this chapter, relating to mass meetings or beat meetings, or who shall otherwise violate the laws of this state regulating mass meetings or beat meetings, shall be guilty of a misdemeanor. (Ib.)

"I desire to make the following inquiries:

"(1) Whether or not a meeting held by a Political party on September 12, 1942 would be a legal and lawful meeting of such party's committeemen, representatives or other party officers of such party.

"(2) If such political party in compliance with the above quoted sections held a meeting on the second Tuesday in August, 1942, to select its candidates at such meeting and adjourned such meeting to be held on

the Second Saturday in September, 1942, would the act of the committeemen, representative and other party officers at the meeting on September 12, 1942 be legal, and the acts or act of the committeemen, representative or other party officers be lawful and legal acts of such political party.

"(3) A meeting attempted to be held by a political party on September 12, 1942, instead of August 11, 1942, as provided by law, would the acts of the committeemen, representatives or other party officers in certifying the name or names of the candidates attempted to be nominated be legal and lawful acts of such political party.

"(4) If the candidates of a political party were certified by such party as having been nominated on the 12th day of September, 1942, or at some date other than the second Tuesday in August, 1942, be legal candidates of such party and entitled to have their names certified as candidates, and their names printed upon the ballots as provided by Title 17, Section 145 of the 1940 Code of Alabama.

"(5) If the acts of a political party in holding a mass meeting, beat meeting or other meeting of the voters and representatives of such party for the purpose of nominating any candidate or candidates for public office, to be voted for in a general election in Alabama are unlawful as being in conflict with the above provisions of law, would the acts of such voters or representatives of such party in attempting to nominate any candidate or candidates for public office, be unlawful.

"I would appreciate a prompt reply to the above questions, as it will be necessary for me to cause the ballots to be printed at least twenty (20) days before the General Election, 1942."

Rather than answer categorically the questions contained in your letter of inquiry, I hereinbelow set out my interpretation of the provisions of Article 2, Title 17, Code of 1940.

The question for determination is whether or not the provisions of Article 2, supra, are merely directory or mandatory.

Section 675, Title 17 provides that the mass meetings or beat meetings here considered shall be held in even numbered years on the second Tuesday in August. The second Tuesday in August of this year was August 11. It appears that the meeting held by the political party here considered was held on September 12, 1942, rather than on August 11, 1942.

The Supreme Court in the case of **Rainwater et al. v. State ex rel. Strickland et al.,** 237 Ala. 482, 187 So. 484, held that the statutory provisions as to the time of holding an election were directory and not mandatory, if it appears from the general scope of the statute that such was the legislative intent. The converse of this principle is likewise true.

Section 416, Title 17, provides that any person or persons who shall hold or attend or participate in the holding of any meeting for the purpose of nominating a candidate, or candidates, for public office to be voted for in a general election at any time or place other than as provided by Section 675, supra, shall be guilty of a misdemeanor. Based upon the Rainwater case, it is my opinion that the legislature, by the enactment of Section 416, supra, expressed a definite legislative intent that the provisions of Article 2, supra, are mandatory and not merely directory.

Premises considered, it is my opinion that the action of the political party at the meeting on September 12, 1942, was void and of no effect, and you, as Probate Judge, should not certify the names of the candidates at such meeting to be printed upon the official ballot as provided by Title 17, Section 146, Code of 1940.

I refer you to the cases of **Ladd v. Holmes,** 40 Ore. 167, 66 Pac. 714, and **State ex rel Van Alstine v. Frear,** 124 Wisc. 320, 125 N. W. 961. These cases both uphold the constitutionality of legislation very similar to that discussed in this opinion.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 30, 1942.

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Houston County—Road and Bridge Foreman

1. Road and Bridge Foreman appointed by Board of Revenue of Houston County must be a competent civil engineer.

Opinion by Assistant Attorney General Russell.

Dear Sir:

Your request for official opinion bearing date of September 12, 1942, is as follows:

"Please refer to Local Acts 1935 at page 251 (H 1013) and at page 253 (H. 1014) and to Local Act 1939 at page 133 (S. 294) and advise me as follows:

"H. 1013 creates and establishes a Road and Bridge Department and Section Six provides: 'The Road and Bridge Foreman shall be an experienced road builder and bridge man, and a competent civil engineer.'

"H. 1014 creates and establishes a Board of Revenue for Houston County.

"S. 294 establishes a four member Board of Revenue, amending H. 1014 which provided for a three member Board. Section 6 of this Act provides for the appointment of a Road and Bridge Foreman and containing a 'hold over' clause as to the present Foreman until January 1943.

"Section 8 is the repealing clause and especially H. 1014 but is silent as to H. 1013.

"Please advise me if H. 1013 is still in effect under the repealing clause of S. 294, and if section 6 of H. 1013 is still the law of our county, and, specifically under our local laws, whether the County Road and Bridge Foreman must be an "experienced road builder and bridge man, and a competent civil engineer.' "

In answering your inquiry, attention is called to the fact that the 1935 Acts to which you refer in your letter (Act No. 437 H. 1013 and Act No. 438 H. 1014, Local Acts of 1935, pages 251 and 253, respectively) were approved and became law on the same day, to wit, September 13, 1935. Act No. 437, supra, established and created for Houston County a Road and Bridge Department and a Road and Bridge Foreman. The said Act provides that the Road and Bridge Foreman shall be elected and appointed by the Board of Revenue of Houston County to serve for a period of four years. Said Act provides, among other things, in Section 6 as follows:

"The road and bridge foreman shall be an experienced road builder and bridge man, and a **competent civil engineer."** (Emphasis supplied)

Act No. 438, supra, created and established a Board of Revenue for Houston County in lieu of the then existing Court of County Commissioners, and, among other things, recognized and made provision in Section 6 thereof for the office or position of Road and Bridge Foreman, and provided for the duties of the said Board with reference to the same. Section 6 is as follows:

"Section 6. The Board of Revenue shall elect or appoint a Road and Bridge Foreman as head of the Road and Bridge Department, and fix his salary in a sum not to exceed $250.00 per month, and make said appointment immediately after vacancy is created in said office, and each succeeding Board of Revenue shall make said appointment immediately after their induction into office. The said Road and Bridge Foreman shall serve for a period of four years and until his successor is elected and qualified, unless removed for cause. And, the present County Road Foreman will hold over and become Road and Bridge Foreman at the

salary he is now receiving as County Road Foreman until the first Monday after the second Tuesday in January, 1939."

Careful study discloses that the provisions of Act No. 437, supra, and of Section 6 of Act No. 438, supra, with reference to the appointment or election and salary of the Road and Bridge Foreman are identical. Act No. 437, supra, does, however go further and makes more specific provision in reference to said office, and among other things, as heretofore pointed out, provides that the Road and Bridge Foreman shall be a competent civil engineer.

As heretofore pointed out, both statutes were enacted at the same legislative session, and were approved and became law on the same day. Thus, under the law, they must be construed in pari materia, and must be harmonized, if possible. **Board of School Com'rs. of Mobile County v. American Surety Co. of New York,** 220 Ala. 458, 125 So. 906, and cases collated under Statutes, Key No. 225¼, Volume 18 of Alabama Digest. Therefore, applying this established principle of law to the Acts under consideration, the only logical conclusion that can be reached is that the Road and Bridge Foreman appointed or elected by the Board of Revenue of Houston County, must have the qualifications and comply with the provisions of Act No. 437, supra. Thus it is my opinion that it was necessary for one appointed Road and Bridge Foreman for Houston County, after the passage and approval of the 1935 Acts, supra, to be a competent civil engineer.

You next call attention to the fact that Act No. 240 S. 294, which became law under Section 125 of the Constitution (Local Acts 1939, page 133) expressly repealed Act No. 438, supra, and you wish to know whether or not Section 6 of Act No. 437, supra, is still the law. Act No. 240, supra, did not expressly repeal Act No. 437, supra, but on the contrary, contains a provision with reference to the Road and Bridge Foreman which is identical, with the exception as to the time the then appointed or elected foreman should hold office, with that found in Act No. 438, supra. It therefore follows, in view of the conclusion hereinabove reached, that Act No. 240, supra, does not affect Section 6 of Act No. 437, supra, and that the Road and Bridge Foreman of Houston County must, under the law as it now exists, be a competent civil engineer.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 30, 1942.

Hon. G. Claiborne Blanton,
Judge of Probate,
Dallas County,
Selma, Alabama.

1. Court of County Revenue of Dallas County may pay back salary, in sum prescribed by law, to member who has not been paid his lawful salary for a period of twenty years.

2. Statutes requiring presentation and auditing of claims against county, and forbidding suit until the claims so presented has been disallowed or reduced, have no application to salary due county officers.

Opinion by Assistant Attorney General Simmons.

Dear Sir:

Your request for official opinion, bearing date of September 17, 1942, is as follows:

"I would appreciate your rendering me an opinion on the following subject:

"Can the Court of County Revenues of Dallas County pay compensation to a County Commissioner, for his services as such, for a period of twenty years where the said Commissioner had not been paid any compensation whatsoever for his services?

"The Court of County Revenues was created by Local Act (Local Act 1875-1876, page 385), and provided for the Probate Judge as Chairman and four members to be appointed by the Governor; compensation of each member was $3.00 per day and the Probate Judge $4.00 per day. This Act was amended by a Local Act (Local Acts 1900-1901, page 890) providing for the election of four members and allowing each member $4.00 per day for services. This Act was further amended by Local Act (Local Acts 1931, page 15) enlarging the powers of the Court and requiring bond of the Probate Judge as Chairman.

"Your attention is respectfully called to case tried by the Court of Appeals, which case is Jefferson County vs. O'Gara, found in 195 Southern 267, 277. This case is referred to in footnotes of Title 12, Section 115, Pages 400 and 401. In discussing this case with State Auditors in the Courthouse they think that any compensation due a County Commissioner could be paid under the authority of this case."

It is my opinion that the member to whom you have reference is entitled, under the facts you have given, to payment of his lawful salary for the period you have mentioned.

The courts of Alabama have held that the sections of the code requiring claims against a county to be presented and audited, and forbidding suit until such claim has been disallowed or reduced, have no application to the salary of a county officer. Judge Bricken, speaking for the Court of Appeals in the case of **Jefferson County v. O'Gara,** 193 So. 267(21), held, in reaffirmation of prior decisions on the same subject, as follows:

> "This court held, upon the original submission of this case, that it was not necessary for a claim for a balance of the salary or compensation of a public county officer for his salary or any balance due thereon to be presented to the governing body of a county for allowance. We think that holding is sound. The salary or compensation here involved was fixed as provided by law and needed no presentation to the county commission of Jefferson County. Hasty v. Marengo County Bank, 204 Ala. 229, 86 So. 37; Ward v. State ex rel. Goldsmith, 17 Ala. App. 170, 82 So. 660; State ex rel. Holcombe v. Stone, 26 Ala. App. 226, 157 So. 452; Sarah Jeffers, as Ex'x etc. v. Robert H. Wharton as President, etc., Ala. App.,_____ So._____.
>
> "We therefore hold that sections 224, 225, 228 and 5680 of the Code, 1923, respectively, are inapplicable to the claim here sued upon."

Judge Bricken further held in this case that salaries for county officers are not the product of a contractual obligation, but an emolument of office fixed by law.

We know of no statute of limitations which would bar the member of his lawful salary during the period you have mentioned.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

September 30, 1942.

Hon. J. W. Sharpton, President,
Board of Revenue, Etowah County,
Gadsden, Alabama.

County Governing Bodies—Venereal Diseases—Feeding Prisoners Committed to Jail—

Under the provisions of Title 22, Section 264, Code of Alabama, 1940, the county is liable for feeding persons infected with venereal disease committed to jail when such persons do not reside in the county, nor in an incorporated municipality therein.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for official opinion bearing date of September 15, 1942, is as follows:

> "Under Title 22, Section 264, of the 1940 Code of Alabama, a number of persons have been committed to the Etowah County Jail. Among these persons are some who reside in an incorporated municipality within Etowah County and others reside within an incorporated municipality of counties other than Etowah.
>
> "I would be most appreciative if you would furnish me with a legal opinion as to whether or not Etowah County is under any legal obligation to pay the Sheriff of Etowah County for the cost of feeding and keeping such persons who are residents of an incorporated municipality in some county other than Etowah County. If not, is the municipality outside Etowah County liable to the Sheriff of Etowah County for such costs? I might say that practically all of these persons were committed to the County Jail upon the order of the Etowah County Health Officer."

My answer to your first inquiry is in the affirmative.

From a reading of Chapter 11, Title 22, Code of 1940, Section 264 being a part thereof, it appears that the control and prevention of venereal diseases is placed on a county unit basis. All through this chapter reference is made to the county health officer, and the principal powers and duties contained therein are delegated to such officer. Reports are made by the various practicing physicians in the county to the county health officer, and various other duties are placed on him under the provisions of this chapter. This leads me to the conclusion that it was the legislative intent, when the act was passed which now composes Chapter 11, supra, that the treatment and control of venereal diseases was a county matter.

The pertinent part of Section 264, Title 22, Code of 1940, after providing that persons who refuse to take treatment for venereal diseases may be committed to the county or city jail provides as follows:

> "Cost of feeding and keeping such person or persons shall be at the expense of the city in the event such person or persons reside in an incorporated municipality; otherwise, the same shall be at the expense of the county."

It is my judgment that the term "in the event such person or persons reside in an incorporated municipality" refers to a person or persons in an incorporated municipality within the limits of the county. If such person does not reside in an incorporated municipality within the county, then the cost of feeding such person is imposed upon the county. In my opinion the word "reside" as used in the above quoted provision has reference to the place in the county where a person is working or living at the time of the incarceration and not to his legal residence.

The premises considered, it is my opinion that the cost of feeding persons who reside in an incorporated municipality outside of Etowah County, who have been committed to the county jail of Etowah County by the county health officer under the provisions of Section 264, supra, is a legal obligation of Etowah County, and not the obligation of the municipality in which such person is a legal resident.

Yours very truly,

THOMAS S. LAWSON,

Attorney General.

Attorney General's Report

TO THE

Governor

AND

Solicitor's Reports

1938 - 1942

REPORT OF THE ATTORNEY GENERAL TO THE GOVERNOR

As required by Section 228, Title 55, Code of 1940, I hereby submit report as therein required.

I make the following suggestions which, in my judgment, will tend to suppress crime and will improve the criminal administration:

The Alabama Department of Toxicology may be properly called a bureau of scientific criminal investigation.

In July, 1935, the Legislature created the department, and charged it with the responsibility of furnishing scientific aid to law enforcement in this state.

A review of the records compiled by the department will show two interesting facts. First, that an efficient, modern technical procedure has been developed for the investigation of serious criminal cases; second, that a practical application of these scientific methods has been effected in more than 2250 cases for the state.

Every law enforcement agency in Alabama from the offices of the Governor and Attorney General, down to the smallest municipality is today using the department's facilities as an aid to more efficient and more economical criminal law enforcement.

Such a department to function properly must have the ability and the disposition to furnish valuable assistance and conscientious cooperation to all other law enforcement agencies. This has been done consistently and the records prove it. The Toxicology Department has the good will of all of the other state departments. In every single instance where the development of the department, or a continued normal functioning, was endangered by lack of adequate funds, some other state agency has graciously given financial aid to insure that no backward step be taken. The Legislature and the Alabama Merit System have removed the State Toxicologist from

political influence, so far as it is possible under our system of government.

The Attorney General exercises a nominal supervision over the department. This supervision becomes militantly active when, in his discretion, a situation appears to necessitate such action. This has been a strong sustaining influence in certain difficult situations that have existed.

The Department of Toxicology under the supervision of the Attorney General, and the Alabama Department of Public Safety under the supervision of the Governor, have developed a cooperative law enforcement program that is increasingly valuable to the people of Alabama.

State police officers who are better and better trained in their work are now to be found in every county in Alabama. These officers have rapid communication and transportation facilities with their own headquarters and with the Toxicology Department. They know how and when to secure highly trained experts to assist them in any emergency that may arise that may be of concern to criminal law enforcement. This status should be maintained and improved with a more comprehensive educational training program for state officers that could be made available to certain selected county and municipal officers.

The Toxicology Department started with one small chemical laboratory service. It has been steadily developed into a complete toxicological and criminological service. The following services are rendered the state's law enforcement program at this time:

1. Ballistics identification (firearms).

2. Handwriting identification and questioned document examination.

3. Fingerprinting.

4. Moulage.

5. Exhumations of practically all dead bodies that are done for Alabama in criminal cases. Medico-legal autopsies.

6. Chemical analyses of:

   (a) Whiskey, wine and beer

   (b) Foods, beverages, drugs

   (c) Organs of dead bodies—human

   (d) Organs of dead bodies—animal

   (e) Stains including blood stains

   (f) Urine and blood in D. W. I. cases or pedestrian death cases.

   (g) Miscellaneous specimens of physical evidence related to criminal cases.

7. Physical analyses of any type of specimen that may be related to a criminal case.

8. Police photography including infra red and ultra violet light examinations.

9. Special field investigations of serious crimes or death cases in every county of Alabama.

10. Expert testimony in the various state courts.

11. Expert opinion and scientific advice to all police agencies and the state attorneys.

12. Assistance in state police training programs.

13. Special investigations for the Attorney General.

14. Any further duties assigned by the Governor or the Attorney General.

The department, with the Attorney General's approval,

cooperates with all federal or military authorities in Alabama in their criminal investigations of sabotage, etc.

Official procedures for the above examinations and identifications have been developed within the office of the State Toxicologist during the past seven years. This has been accomplished through library and laboratory research, with constant experimentation. The circuit courts and the appellate courts consistently approve these official procedures and also the qualifications of the technical experts who represent the State Toxicologist's office before the Alabama courts.

Since July 19, 1935, Alabama has not found it necessary to call on Chicago for a ballistics expert, nor on Washington for a handwriting expert. The situation is nearer the reverse with requests being frequently received by the State Toxicologist from several other states for toxicological advice or assistance in serious investigation there.

During the past seven years the Supreme Court of Alabama has not reversed a single case because of questionable blood stain identifications. The reports prior to that date show that the courts were practically without competent advice on this subject and that few such identifications were ever attempted.

The State Toxicologist's office has accomplished much toward the end recommended by the Alabama Crime Commission to the 1935 Legislature, "that adequate facilities be established in this state for the determination of physical evidence related to criminal cases where the results of such scientific investigations would be of value to the courts of law in their reviews of these criminal cases." A complete scientific service of this nature should be coordinated with adequate and competent field investigations of serious criminal offenses in the interest of efficient law enforcement in this state.

Cases Investigated by Toxicology Department
From July 19, 1935, to June 27, 1942

First year	116 cases	end July 19, 1936
Second year	128 cases	end July 19, 1937
Third year	219 cases	end July 19, 1938
Fourth year	477 cases	end July 19, 1939
Fifth year	345 cases	end July 19, 1940
Sixth year	512 cases	end July 19, 1941
Seventh year	644 cases	end June 27, 1942

(685 calculated full year)
Record first four years—940
1935-1939 quadrennium

Record first three years succeeding quadrennium — 1,542 cases.

Calculated at same rate for full four years 1939-1943—2,056 cases.

History of Toxicology Department
(Financial Support)

Created by Legislature in July, 1935, with annual appropriation of $8,500.

During the quadrennium Governor Graves supplemented the budget by $500, and the Department of Agriculture supplemented the budget by $1,920 per year starting July, 1938.

The 1939 Legislature increased the annual appropriation to $15,000 per year. The Department of Agriculture continued the $1,920 annual supplement. Governor Dixon supplemented the budget by $2,650 during the first year of his administration. The Department of Public Safety supplemented the budget by $1,800 per year starting June 1, 1942. Current annual budget—$18,720.

1. The department should have sufficient appropriations that it can function without financial strain. Other departments should not need to supplement the department's budget, and the Toxicology Department should not have to become obligated to other departments in order to maintain its functions.

2. The first four years were experimental years. During that period the department proved its worth to the people. An annual appropriation of $50,000 has been determined necessary to provide Alabama with a complete service by this department. This was requested and refused in 1939. The Attorney General has consistently recommended this $50,000 annual appropriation.

3. The department will save the state more than it spends in preventing crime and in reducing court costs.

I further suggest that a state morgue be set up inside the walls of Kilby Prison, devoted to the use of the Department of Toxicology and to the Convict Department of the State. This facility will, in my judgment, be a material aid to the work carried on by the State Department of Toxicology and the Convict Department.

Attached hereto and made a part hereof is a compilation of the reports of the several Circuit Solicitors of the criminal cases disposed of during the past quadrennial.

WILLIAM N. McQUEEN,
Attorney General.

Oct. 31, 1942

Solicitor's Reports

to the

Attorney-General of Criminal Cases Disposed of

from October 1, 1938 to Oct. 1, 1942

of the

Circuit Courts of the State of Alabama

GENERAL SUMMARY OF CASES IN CIRCUITS—1938-1942

JUDICIAL CIRCUITS	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
1st Judicial Circuit	593	309	54	210	20	.....	173	28	7	102	.....
2nd Judicial Circuit	649	396	36	192	25	.....	261	73	3	58	1
3rd Judicial Circuit	1,358	929	202	221	6	2	414	83	1	432	.....
4th Judicial Circuit	1,468	1,265	43	148	12	3	859	260	34	109	.....
5th Judicial Circuit	1,386	861	115	394	16	1	703	62	10	85	3
6th Judicial Circuit	1,023	691	46	262	24	1	261	264	16	169	.....
7th Judicial Circuit	1,221	768	142	287	24	1	548	68	11	140	.....
8th Judicial Circuit	768	449	70	220	29	.....	296	21	29	102	1
9th Judicial Circuit	1,103	386	40	645	32	.....	246	51	22	74	.....
10th Judicial Circuit	4,425	2,805	249	1,316	55	8	1,849	597	24	307	.....
11th Judicial Circuit	365	273	29	48	15	.....	180	44	1	45	3
12th Judicial Circuit	570	413	54	100	3	2	223	140	.....	50	.....
13th Judicial Circuit	3,959	2,673	303	686	297	11	851	259	953	599	.....
14th Judicial Circuit	1,449	885	103	432	29	.....	258	161	64	433	26
15th Judicial Circuit	1,531	1,152	80	298	1	4	885	87	5	43	228
16th Judicial Circuit	1,347	604	139	570	34	.....	419	90	14	81	.....
17th Judicial Circuit	1,123	874	30	205	14	1	370	77	2	420	4
18th Judicial Circuit	687	534	47	95	11	2	319	82	1	130	1
19th Judicial Circuit	1,728	999	56	629	44	1	443	271	5	279	.....
20th Judicial Circuit	682	387	82	188	25	.....	228	84	3	74	15

21st Judicial Circuit	993	595	45	292	61	.....	303	115	24	268	11
22nd Judicial Circuit	502	276	31	176	19	1	105	62	2	107	.....
23rd Judicial Circuit	988	658	156	154	20	1	192	170	34	261	33
24th Judicial Circuit	517	353	39	113	12	.....	129	93	8	150	20
TOTALS	30,435	19,535	2,191	7,881	828	39	10,515	3,242	1,273	4,518	346

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FIRST JUDICIAL CIRCUIT—A. S. Johnson, Solicitor											
Abandonment of Family	1			1							
Abusive Language	13	8	1	4				2		6	
Aiding Prisoner to Escape	2	1		1				1			
Allowing Hogs to run at large	3	1	2							1	
Arson	2		1	1							
Assault and Battery	27	18	3	6			1	1		16	
Assault to Murder	18	8	3	5	2		8				
Assault to Rape	1			1							
Assault to Rob	1	1					1				
Assault with intent to Ravish	1			1							
Assault with Weapon	25	20		5				7		14	
Attempt to Distill	5	3		1	1					3	
Attempt to Murder	4	3	1				2			1	
Attempt to Poison	1	1					1				
Bastardy	7	2		3	2		1			1	

Bigamy	1	1					1				
Burglary	29	22		5	2		22				
Burning Woods	4	3		1				2		1	
Buying, receiving and concealing stolen property	6	2		4			2				
Carnal Knowledge	3	1		2			1				
Carrying Concealed Weapon	2	2						1		1	
Crime against Nature	1	1					1				
Distilling	38	29	3	6			28	1			
Disturbing Public Worship	2			2							
Driving While Intoxicated	2	1		1						1	
Embezzlement	6		3	3							
False Pretense	11	2		9			1	1			
Forgery	7	6		1			5		1		
Fraud Board Bill	1			1							
Fraudulent Check	9	3	1	5				2		1	
Grand Larceny	87	45	10	32			45				
Having still in possession	1	1					1				
Kidnapping	2		1	1							
Leaving scene of accident	3	2	1				1			1	
Lottery	3		1	2							
Maintaining unlawful drinking place	9	2	1	6						2	
Malicious Injury to Animal	2	1			1				1		
Malicious Injury to Property	1			1							
Manslaughter	18	17		1			17				
Murder	26	21	3	2			21				
Operating dance hall without license	3	1		2						1	
Operating pool table without license	1	1								1	
Operating slot machine without license	13	10		3						10	
Petit Larceny	37	15	5	13	4		2	6	2	5	
Possession of still	2	2					2				
Presenting Firearms	3	1		2				1			
Public Drunkenness	12	6		6				1	2	3	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FIRST JUDICIAL CIRCUIT—(Continued)											
Rape	2	1		1			1				
Reckless Driving	4	1	1	2						1	
Resisting Officer	1			1							
Robbery	2		1	1							
Selling Mortgaged Property	3	1		2					1		
Shooting Dog	1	1						1			
Shooting along Public Road	1	1								1	
Sodomy	1			1							
Temporary use of Personal property	3	3								3	
Transporting Liquor	6	6					6				
Trespass	7	1	3	2	1					1	
Using Motor Vehicle without owner's consent	1	1								1	
Vagrancy	1										
Violating Election Law	3		1	2							
Violating Game and Fish Law	22	8	2	12						8	
Violating Highway Law	2			2							

Violating Motor Vehicle Law	3			3							
Violating Pistol Law	1	1						1			
Violating P. L.	71	20	5	39	7		1			19	
Violating Rabies Law	1			1							
Violating Revenue Law	1			1							
TOTALS	593	309	54	210	20		173	28	7	102	
SECOND JUDICIAL CIRCUIT—C. J. Kettler, Solicitor											
Abusive Language	8	3		3	2			3			
Arson	8	5	1	2			5				
Assault and Battery	47	36	1	8	2		1	21		14	
Assault to Murder	51	19	6	24	2		18	1			
Assault to Rape	2	1		1			1				
Assault to Rob	2	1		1			1				
Assault with Weapon	6	4	1	1				4			
Attempt to Burglarize	4	4						3		1	
Attempt to Commit Grand Larceny	1	1								1	
Attempt to Distill	1			1							
Bastardy	1			1							
Bigamy	1	1					1				
Breaking Fence	1			1							
Burglary	80	67	2	10	1		67				
Burning Woods	1		1								
Buying, receiving, concealing stolen property	3	1		2			1				

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SECOND JUDICIAL CIRCUIT—(Continued)											
Carnal Knowledge	6	4		2			4				
Carrying Concealed Weapons	3	3						2		1	
Distilling	64	52	3	8	1		51				1
Distrubing Public Worship	2	1	1					1			
Driving While Intoxicated	23	8	2	13				3		5	
Embezzlement	1			1							
False Pretense	7	3		4			3				
Forgery	16	6		10			6				
Fraudulent Check	4		1	3							
Grand Larceny	103	60	4	33	6		60				
Malicious Injury to Animal	2	1		1				1			
Malicious Setting Fire to Cotton	1			1							
Manslaughter	20	13	2	5			13				
Murder	40	22	3	12	3		22				
Petty Larceny	21	17		4				13	3	1	
Public Drunkenness	13	9		3	1			4		5	
Reckless Driving	12	9		3				2		7	

Robbery	15	6	3	6			6				
Selling Mortgaged Property	1	1						1			
Transporting Liquor	1				1						
Trespass	1		1								
Violating Forestry Law	2	1		1						1	
Violating Game Law	7			2	5						
Violating Highway Law	1			1							
Violating Motor Vehicle Law	3	2		1			1			1	
Violating P. L.	61	35	4	21	1			14		21	
Violating Revenue Law	1			1							
Violating Sunday Law	1			1							
TOTALS	649	396	36	192	25		261	73	3	58	1
THIRD JUDICIAL CIRCUIT—G. W. Andrews, Solicitor											
Abandonment	2	1		1						1	
Abortion	1	1					1				
Abusive Language	25	13	5	7				1		12	
Adultery	4	2		2							
Affray	3	2						1		1	
Arson	16	11	2	3			11				
Assault	1	1						1			
Assault and Battery	153	132	10	11			9	16		109	
Assault to Murder	88	56	20	10	2		50	5		1	
Assault to Rape	5	3	2				3				

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
THIRD JUDICIAL CIRCUIT—(Continued)											
Assault to Rob	1	1					1				
Assault with Weapon	22	18	2	2				8		10	
Attempt to Burglarize	2	2								2	
Attempt to commit Grand Larceny											
Attempt to Distill											
Bastardy	5	1	1	2	1					1	
Betting at Cards	4	2	1	1						2	
Bigamy	3	2		1				2			
Breaking Fence	1	1								1	
Burglary	93	66	13	14			62	1		3	
Buying, receiving, concealing stolen property	13	9		4			5	1		3	
Carnal Knowledge	10	2	4	4			2				
Carrying Concealed Weapon	14	6	3	5						6	
Carrying Pistol without license	1	1								1	
Contempt of Court	2	2								2	
Crime against Nature	1	1					1				
Defaulting witness	1	1								1	

Distilling	93	70	11	12			69			1	
Disturbing Public Worship	4	4								4	
Driving While Intoxicated	31	25	4	1	1			1		24	
Embezzlement	23	6	5	12			1			5	
Enticing away Servant	4	1	1	2						1	
Escape	2	2						2			
Failure to bury dead animal	1		1								
Failure to inoculate dog	2	1	1							1	
False Pretense	15	9	3	3			4			5	
Forgery	21	15	1	5			11	1		3	
Fraudulent Check	13	10		3				1		9	
Grand Larceny	141	98	21	22			94	3		1	
Having interest in county funds	2	1		1						1	
Incest	1	1					1				
Keeping Gambling machine	21	15	2	4						15	
Leaving scene of Accident	5	5					1	2		2	
Malicious Injury to animal	7	2	5							2	
Manslaughter	35	27	3	5			17	4	1	7	
Mayhem	2		1	1							
Misdemeanor	1	1								1	
Murder	68	50	12	6		2	48				
Nonsupport	4	2		2						2	
Perjury	6	2		4						2	
Petit Larceny	69	53	9	7			1	15		38	
Poisoning	1			1							
Presenting Firearms	6	3	2	1						3	
Public Drunkenness	41	29	3	9				4		25	
Rape	8	2	2	3	1		2				
Reckless Driving	15	9	3	2	1					9	
Resisting an Officer	4	3		1				1		2	
Robbery	24	11	6	7			11				
Seduction	2		1	1							

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
THIRD JUDICIAL CIRCUIT—(Continued)											
Selling mortgaged property	13	4	5	4			1			3	
Shooting along Road	2		1	1							
Shooting into Dwelling House	2	2								2	
Sodomy	1	1								1	
Throwing Rocks	1		1								
Transporting Liquor	8	8					8				
Trespass	9	3	3	3						3	
Using car without permission	4	4								4	
Vagrancy	22	13	2	7				6		7	
Violating ABC Act	10	6	1	3						6	
Violating Game Law	19	6	10	3						6	
Violating Highway Law	2	1	1							1	
Violating Motor Vehicle Law											
Violating P. L.	117	85	16	16				7		78	

Violating Revenue Law	6	2	2	2						2	
TOTALS	1,358	929	202	221	6	2	414	83	1	432	
FOURTH JUDICIAL CIRCUIT—Jos. H. James, Solicitor											
Abusive Language	12	7		4	1			3	1	3	
Adultery	1			1							
Affray											
Aiding Felon to Escape											
Altering Brand											
Arson	5	3	1	1			3				
Assault											
Assault and Battery	21	17	2	2				8	3	6	
Assault to Murder	69	41	9	17	2		39	1		1	
Assault to Rape	4	2		2			2				
Assault to Rob	5	5						5			
Assault with a Weapon	85	81		3				61	4	16	
Attempt to Commit a Felony	6	6					3	1	1	1	
Bastardy	1	1								1	
Bigamy	3	1		2			1				
Burglary	157	138	4	13	2		138				
Buying, Receiving, Concealing Stolen Property	18	14		4			10	2		2	
Carnal Knowledge	2			1	1						
Carrying Concealed Weapon	41	30	2	9				27	3		
Conspiracy	1	1							1		

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FOURTH JUDICIAL CIRCUIT—(Continued)											
Contempt of Court	1	1								1	
Contributing to Delinquency											
Crime against Nature											
Decoying Child											
Defacing Public Property	1	1								1	
Disorderly Conduct											
Distilling	423	410	5	8			410				
Disturbing Public Worship	9	7		2				5	1	1	
Driving While Intoxicated	11	9	1	1				5	3	1	
Embezzlement	6	5		1			5				
Failure to keep proper reports											
Failure to re-deliver Hired Vehicle											
False Pretense	2			2							
Forgery	22	21			1		21				
Gaming	2	2								2	
Grand Larceny	160	131	7	22			131				
Indecent Exposure											

Issuing Worthless Check	7	6		1				6			
Kidnapping	2	2					2				
Leaving Scene of Accident											
Loitering in Automobile											
Malicious Injury to Animal	1	1						1			
Malicious Injury to Property											
Malicious Mischief	2	2						1	1		
Manslaughter	46	42	1	3			36	4	2		
Mayhem											
Molesting Female											
Miscegenation											
Murder	42	33	1	7	1	2	31				
Non-support	1	1						1			
Obstructing Sidewalk	1	1						1			
Obtaining Drug by Fraud											
Obtaining Money by False Pretense	5	4			1		2	1		1	
Operating Slot Machine	8	7		1				1		6	
Perjury	1	1					1				
Petty Larceny	38	32	1	5				19	6	7	
Picketing											
Placing Obstruction on Railroad Track	3	3					31				
Presenting Firearms	2	1		1				1			
Public Drunkenness	26	20	3	3				1	1	18	
Rape	6	5		1		1	4				
Reckless Driving	17	16		1				6		10	
Removing Ballot Box from booth	1	1						1			
Resisting Officer	3	2	1							2	
Robbery	10	7		2	1		3	4			
Seduction	1			1							
Setting Woods Afire											
Selling Mortgaged Property											
Shooting into Dwelling											

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FOURTH JUDICIAL CIRCUIT—(Continued)											
Sodomy	1	1					1				
Threats											
Transporting Liquor	2	2					2				
Trespass	10	7		3				3		4	
Using Car without Owner's Consent	4	4						1	1	2	
Vagrancy	5	3		2						3	
Violating Ala. Beverage Act											
Violating Barber Act											
Violating Game & Fish Law	2			2							
Violating Health Law											
Violating Highway Law	8	6	1	1			1	1		4	
Violating Lottery Law											
Violating Marihuana Act											
Violating Prohibition Law	140	116	3	19	2		5	94	5	12	

Violating Revenue Law	5	5							1	4	
Violating Stock Law											
Violating Unemployment Compensation Law											
TOTALS	1,468	1,265	43	148	12	3	859	260	34	109	
FIFTH JUDICIAL CIRCUIT—Chas. Moon, Solicitor											
Abusive Language	6	1		4	1					1	
Adultery	6			5	1						
Arson	41	30	1	9	1		30				
Assault	1	1								1	
Assault and Battery	24	17	4	2	1			3	2	12	
Assault with Intent to Murder	87	54	12	18	3		52	1		1	
Assault with Intent to Rape	3	1	2				1				
Assault with Weapon	36	32	1	3			4	19	1	8	
Bastardy	12	2	3	5	2			1		1	
Bigamy	1	1					1				
Burglary	157	128	7	21	1		128				1
Buying, Receiving, Concealing Stolen Property	12	6	1	5			3	3			
Carnal Knowledge	6	4	1	1			4				
Carrying Concealed Weapon	6	2		4						2	
Contributing to Delinquency of Female Child	2	2								2	
Disposing of Mortgaged Property	4	1	1	2			1				2
Distilling	286	244	15	26	1		243			1	
Disturbing Peace	6	1	1	4				1			

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FIFTH JUDICIAL CIRCUIT—(Continued)											
Driving While Intoxicated	17	13		4				2	2	9	
Embezzlement	6	3		3				3			
Escape	6	5	1					5			
False Pretense	3	1		1	1		1				
Forgery	12	9	2	1			9				
Grand Larceny	190	121	20	47	2		121				
Incest	1	1					1				
Manslaughter	34	22	5	7			22				
Murder, 1st Degree	28	16	9	3			16				
Murder, 2nd Degree	40	29	7	3	1		29				
Perjury	1			1							
Petit Larceny	23	15	2	6			1	12		2	
Presenting Firearms	3	2		1					1	1	
Public Drunkenness	11	7	1	3				2		5	
Rape	4	3	1			1	2				
Reckless Driving	9	7	1	1						7	
Robbery	31	23	1	5	2		23				

Sodomy	1	1					1				
Seduction	4	2		2			2				
Trespass	6	4		2						4	
Violating Prohibition Law	143	47	11	85			7	10	3	27	
Violating Game Law	4		1	3							
Violating Highway Law	6	1	1	4						1	
Operating Gambling Device	106			106							
TOTALS	1,386	861	115	394	16	1	703	62	10	85	3
SIXTH JUDICIAL CIRCUIT—Gordon Davis, Solicitor											
Abusive Language	8	3		5				2		1	
Aiding Felon to Escape	1	1					1				
Arson	3	1	1	1			1				
Assault	5	4		1				2		2	
Assault and Battery	49	31	4	14				23		8	
Assault to Murder	32	14	3	13	2		13	1			
Assault to Ravish	1	1					1				
Assault to Rob	9	6	1	2			5	1			
Assault with Weapon	50	35		14	1			27	1	7	
Attempt to Commit Arson	1	1								1	
Attempt to Distill	57	57						26		36	
Attempt to Forge	1	1						1			
Attempt to Transport	18	18						14		8	
Bastardy	12	3	2	7			1	1		1	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SIXTH JUDICIAL CIRCUIT—(Continued)											
Bigamy	2	1		1			1				
Burglary	87	69	3	11	4		69				
Buying, Receiving, Concealing Stolen Property	7	6		1			1	5			
Carrying Concealed Weapon	1	1						1			
Contempt of Court	1	1								1	
Contributing to Delinquency	1	1								1	
Disposal of Mortgaged Property	4	3		1						3	
Distilling	48	31	8	8	1		31				
Decoying Child	1			1							
Driving while Intoxicated	13	9	1	3				6	1	2	
Dynamiting Residence	1			1							
Embezzlement	6	3		3			1			2	
Extortion	2	2						2			
False Pretense	4	1	1	2				1			
Failing to pay for hire of vehicle	1			1							
Forgery	37	19		18			19				
Fraudulent Check	2			2							

Gaming	6	1		5						1	
Grand Larceny	88	57	4	26	1		56	1			
Keeping Disorderly House	2	2						1		1	
Keeping Gaming Table	4	2		2				1	1	1	
Leaving scene of Accident	16	6	2	7	1		4	2			
Manslaughter	22	22					16	6			
Malicious Injury to Animal	4	1		3				1			
Malicious Injury to Property	5	3		2				2		1	
Miscegenation	2	2					2				
Murder	24	14	3	5	2	1	13				
Non-support	10	4	2	4				4			
Operating Gambling Device	5	5						3		2	
Petit Larceny	57	44		11	2		1	32	7	10	
Possessing Still	1	1					1				
Presenting Firearms	5	2		3				2			
Public Drunkenness	54	49	1	4				20	6	23	
Reckless Driving	20	12	1	6	1			8		5	
Robbery	16	14	1	1			14				
Shooting into Dwelling	1	1						1			
Speeding	5	5					1	1		3	
Transporting Liquor	13	8		4	1		8				
Trespass	8	5		3				5			
Using car without consent of owner	7	5		2				5			
Vagrancy	17	7		10				3		4	
Violating Election Law	5	2		1	2					2	
Violating Game Law	6		1	5							
Violating Highway Law	12	2		4	6			1		1	
Violating Prohibition Law	139	90	7	42			1	51		43	
Violating Stock Law	1			1							
Violating Unemployment Law	3	2		1				1		1	
TOTALS	1,023	691	46	262	24	1	261	264	16	169	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SEVENTH JUDICIAL CIRCUIT—J. J. Cockrel, Solicitor											
Abortion	1	1					1				
Abusive Language	9	6	2	1				1		5	
Adultery	7	3		4				1		2	
Aiding Prisoner to Escape	1	1					1				
Arson	7	5	2				5				
Assault and Battery	54	37	7	10				7	1	29	
Assault to Murder	56	29	14	13			21	4		4	
Assault to Ravish	5	3	1		1		3				
Assault to Rob	2	2					2				
Assault with Weapon	30	21	2	7			1	4		16	
Bastardy	8		2	6							
Bigamy	5	3		2			3				
Bribery	1	1								1	
Burglary	161	133	8	14	6		130	2	1		
Burning Woods	1			1							

Buying, Receiving, Concealing Stolen Property	11	8		3			8				
Carnal Knowledge	12	9		3			9				
Carrying Concealed Weapons	1	1								1	
Conspiracy	35			35							
Crime against Nature	1	1					1				
Decoying Child	1			1							
Distilling	146	122	14	8	2		122				
Disturbing Public Worship	1			1							
Distributing Liquor at Elections	1			1							
Driving while Intoxicated	23	16	3	4				6		10	
Embezzlement	8	6	1	1			6				
False Pretense	1	1								1	
Forgery	38	22	1	8	7		21	1			
Grand Larceny	193	149	18	22	4		147		1	1	
Keeping Gaming Table	1			1							
Kidnapping	4	3			1		3				
Leaving scene of Accident	2	1		1				1			
Malicious Destruction of Property	4	2		2						2	
Malicious Injury to Animals	1		1								
Malicious Mischief	2			2							
Manslaughter	8	8					8				
Murder	65	30	19	15	1	1	28	1			
Non-support	3			3							
Operating Gambling Device	4	3		1						3	
Peace Proceedings	1			1							
Perjury	4			4							
Petty Larceny	7	6		1					2	4	
Possessing a Still	2		2								
Presenting Firearms	3	1	1	1						1	
Public Drunkenness	7	1	1	5						1	
Rape	7	2	1	3	1		2				
Reckless Driving	8	6		2				1		5	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SEVENTH JUDICIAL CIRCUIT—(Continued)											
Resisting Officer	1	1						1			
Robbery	17	10	4	3			10				
Seduction	2			2							
Selling Mortgaged Property	1	1								1	
Shooting into Dwelling	2	2						2			
Throwing Acid	1		1								
Transporting liquor	20	15	4	1			13			2	
Trespass after warning	1			1							
Unlawful use of automobile	4	2	2					1		1	
Vagrancy	11	3		8			2	1			
Violating Carrier Act	1	1								1	
Violating Fish Law	2			2							
Violating Game Law	13	2	4	7						2	
Violating Highway Law	1			1							
V. P. L.	175	88	25	61	1		1	34	6	47	
Violating Revenue Law	5		2	3							

Violating Sales Tax Law	1			1							
TOTALS	1,221	768	142	287	24	1	548	68	11	140	
EIGHTH JUDICIAL CIRCUIT—Melvin Hutson, Solicitor											
Abandonment	1			1							
Abusive Language	7	2	1	4			1		1		
Adultery	4	3		1				1	1	1	
Arson	3	2	1				2				
Assault and Battery	14	9	1	4				3	1	5	
Assault to Murder	51	28	7	16			24			4	
Assault to Ravish	1	1					1				
Attempt to Commit Felony	9	7		2			1		1	5	
Bastardy	15	3	2	5	5			1		2	
Bigamy	3	1		2			1				
Burglary	91	71	2	11	7		71				
Carnal Knowledge	9	4	1	4			4				
Conspiracy	4	4								4	
Defaulting Witness	3			3							
Disorderly Conduct	6	1		5						1	
Disposing of Mortgaged Property	3			3							
Driving While Intoxicated	50	38	3	8	1			1	15	22	
Embezzlement	10	1	1	8			1				
False Acknowledgment of Deeds	1			1							
False Pretense	6	1	1	4			1				

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
EIGHTH JUDICIAL CIRCUIT—(Continued)											
Forgery	34	16	1	9	8		15	1			
Fraud	1	1					1				
Fraudulent Check	3			3							
Gaming	2			2							
Grand Larceny	99	54	21	22	2		52		1	1	
Impeachment Proceedings	1			1							
Incest	1	1					1				
Malicious Injury to Property	4	4						1	2	1	
Manslaughter	11	4	2	4	1		2	1		1	
Manufacturing Liquors	110	83	8	18	1		81			1	1
Murder	37	22	12	3			22				
Peace Proceedings	1			1							
Perjury	4			4							
Petit Larceny	10	6	1	3			2	2		2	
Public Drunkenness	21	7		14					1	6	
Rape	3	3					3				
Receiving Stolen Property	6	1	3	2					1		

Reckless Driving	14	12		2						12	
Robbery	2	2					2				
Selling Mortgaged Property	5	2		3						2	1
Seduction	6	1		4	1		1				
Transporting Liquors	13	7		5	1		6			1	
Trespass	1			1							
Vagrancy	8	3		5				2		1	
Violating A. B. C. Act	8	6		2						6	
Violating Agricultural Law	1	1								1	
Violating Highway Law	13	7		6					1	6	
Violating Narcotic Law	1	1					1				
Violating Prohibition Law	54	28	2	22	2			8	4	16	
Violating Revenue Law	3	1		2						1	
TOTALS	768	449	70	220	29		296	21	29	102	1

*Incomplete.

NINTH JUDICIAL CIRCUIT—H. G. Bailey, Solicitor

Abusive Language	12	3		9			2	1			
Adultery	12			12							
Affray	1			1							
Aiding convict to escape	1			1							
Arson	8	3		5			3				
Assault	8	5		3				3		2	
Assault and Battery	26	12		13	1		2	2	1	7	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
NINTH JUDICIAL CIRCUIT—(Continued)											
Assault to Murder	46	10	5	28	3		6	3		1	
Assault to Ravish	8	2		6					2		
Assault to Rob	7	2		5			2				
Assault with Weapon	8	5		3				1		4	
Attempt to Commit Felony	1	1						1			
Attempt to Kidnap	1			1							
Bastardy	17	4		12	1		1	1		2	
Bigamy	4	1	2	1			1				
Breach of Peace	2				2						
Breaking Jail	1	1						1			
Burglary	89	28	2	59			28				
Buying, receiving, concealing stolen property	1	1					1				
Carnal Knowledge	8	2		6			2				
Carrying Concealed Weapon	3			3							
Contempt of Court	1			1							
Criminal Abortion	2			2							
Decoying away Child	1			1							

Defacing Public Building	1			1							
Desertion	1			1							
Destroying Monument	1	1						1			
Distilling	178	98	4	71	5		96	1		1	
Disturbing Public Worship	8	2		6						2	
Driving while Intoxicated	35	15	1	17	2			2	9	4	
Embezzlement	4	1	1	2			1				
Failing to pay for Cotton	4			4							
Failure to stop after accident	2			2							
False Pretense	25	1		23	1					1	
Forgery	42	14	1	27			12		2		
Fraudulent Check	3			3							
Grand Larceny	97	42	2	51	2		37	5			
Incest	6			6							
Keeping Open Store	1			1							
Leaving scene of accident	2	1		1						1	
Malicious Injury to Animal	1	1								1	
Malicious Mischief	2			2							
Manslaughter	19	9	3	6	1		5	3		1	
Mayhem	1	1					1				
Miscegenation	1			1							
Murder	42	16	6	17	3		16				
Operating Gambling Device	9			4	5						
Peace Proceeding	2			2							
Perjury	1			1							
Petit Larceny	35	8	2	25			2	1	4	1	
Presenting Firearms	1			1							
Public Drunkenness	20	4	1	15						4	
Rape	3	3					3				
Reckless Driving	20	9		11				2		7	
Resisting Officer	2			2							
Robbery	7	1	1	2	3		1				

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
NINTH JUDICIAL CIRCUIT—(Continued)											
Seduction	12		1	11							
Selling Mortgaged Property	19	2	1	16			2				
Shooting along Highway	2	1		1						1	
Shooting into Dwelling	2			2							
Sodomy	1	1					1				
Transporting Liquor	27	16	1	10			16				
Trespass	7	2		5			2				
Vagrancy	1			1							
Violating Game and Fish Law	3			2	1						
Violating Highway Law	3	1		2						1	
Violating Motor Vehicle Law	2			2							
Violating P. L.	172	56	6	108	2		3	21	6	33	
Violating Rabies Law	1			1							
Violating Revenue Law	2			2							

Voting Illegally	5			5							
TOTALS	1,103	386	40	645	32		246	51	22	74	
TENTH JUDICIAL CIRCUIT—Geo. L. Bailes, Solicitor											
Abusive Language	7	2		5				2			
Adultery	13	1		12						1	
Arson	11	5	3	3			4	1			
Assault	4	1	1	1						1	
Assault and Battery	273	107	24	135	7			63		44	
Assault with Intent to Murder	139	86	13	38	2		60	21		5	
Assault with Intent to Rape	5	2		3			2				
Assault with Intent to Rob	17	12	2	3			9	3			
Attempt to Commit a Felony	11	3	2	6				1			
Attempt to Distill	1	1								1	
Bastardy	167	76	13	69	9			56			
Bigamy	4	2		2			2				
Breach of Peace	11	4	1	5	1						
Burglary	135	114		21			113	1			
Burglary and Grand Larceny	438	350	14	71	3		340	8		2	
Burglary in Nighttime	83	72	1	10			72				
Buying, Receiving, Concealing Stolen Property	69	27	9	32	1		21	3	1	2	
Carnal Knowledge	9	4	2	3			3	1			
Carrying Concealed Weapon	6	1		12						1	
Contributing to Delinquency of Female	29	11	5	13				11			

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TENTH JUDICIAL CIRCUIT—(Continued)											
Crime Against Nature	5	4		1			2	1			
Defamation	3		1	2							
Desertation & Non-Support	28	15	5	8				15			
Distilling	573	514	9	40	10		510	3		1	
Driving While Intoxicated	137	98	6	28	5			21	1	76	
Embezzlement	47	27	3	17			14	12		1	
Escape	1			1							
False Pretense	57	28	4	25			16	12			
Forgery 2nd Degree	130	78	2	50			63	13	2		
Forgery 3rd Degree	32	23		9			17	5	1		
Gaming	3		1	2							
Grand Larceny	553	381	23	24	3		296	76	5	1	
Incest	4	1	3				1				
Issuing Worthless Check	38	25		15			1	20		2	
Leaving Scene of Accident	20	6	4	10			2	2		2	
Malicious Injury to Animal	2	2						1		1	
Malicious Injury to Property	2			2							
Malicious Mischief	8	3	2	3				2			

Manslaughter—1st Degree	6	3		3			3				
Manslaughter—2nd Degree	22	11	1	10				9	2		
Mayhem	1		1								
Miscegenation	2	1		1			1				
Murder	230	164	29	29	8	5	158				
Obtaining Lodging by Fraud	1			1							
Operating Disorderly House	1	1						1			
Perjury	4	3	1				3				
Petit Larceny	158	103	9	45	1			78	6	19	
Public Drunkenness	24	15		9				6		9	
Rape	26	19	1	6		3	15	1			
Reckless Driving	78	42	7	29				6		36	
Resisting Officer	2		1	1							
Robbery	193	130	18	37			108	30			
Seduction	2	1		1			1				
Selling Mortgaged Property	3	1		2						1	
Throwing Acid on Another	2	2					1	1			
Trespass after Warning	5	2		3				1			
Using Car Without Owner's Consent	5	2	1	2				2			
Unlawful Arrest	2	1		1							
Vagrancy	201	61	7	132	1			52	4	5	
Violating Agricultural Code	17	6		11						6	
Violating Barber Act	1	1								1	
Violating Beverage Control Act	18	5	2	11				1	1	3	
Violating Game & Fish Law	10	2		8						2	
Violating Highway Law	12	1	1	10						1	
Violating Lottery Law	29	20	1	2				12		8	
Violating Narcotic Act	10	8		2			8				
Violating Prohibition Law	260	92	15	149	4			28		64	
Violating Revenue Law	10	5		5			2	1		2	
Violating Stock Law	1			1							

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TENTH JUDICIAL CIRCUIT—(Continued)											
Violating Sunday Law	1	1								1	
Violating Unemployment Compensation Act	13	9		4				5		4	
TOTALS	4,425	2,805	249	1,316	55	8	1,849	597	24	307	
ELEVENTH JUDICIAL CIRCUIT*— Robt. T. Simpson, Solicitor**											
Arson	3	1		2			1				
Assault and Battery	9	5	1	3				3		2	
Assault to Murder	22	16	1	4	1		8	6		2	
Assault with Weapon	12	12						9		3	

Bastardy	1		1									
Burglary	37	34		3			32	2				
Carnal Knowledge	2		1	1								
Defaulting Witness	2				2							
Disturbing Assembly	1	1								1		
Driving While Intoxicated	7	4	2	1				2		2		
Embezzlement	1	1					1					
False Pretense	10	7	1	2			7					
Forgery	17	11			6		10	1				
Grand Larceny	81	67	6	7	1		59	4		4		
Kidnapping	1	1					1					
Leaving Scene of Accident	6	5		1				3		2		
Manslaughter	2	2					1		1			
Manufacturing Liquors	42	33	3	6			27	1		2	3	
Mayhem	1	1						1				
Murder	20	19		1			19					
Miscegenation	2	2					2					
Non-Support	2	2						2				
Perjury	2	2					2					
Petit Larceny	4	3		1			1	2				
Presenting Firearms	1				1							
Public Drunkenness	7	4	2	1						4		
Receiving Stolen Property	3	3					3					
Reckless Driving	21	17	2	2						17		
Robbery	3	3					3					
Transporting Liquors	4	3	1				3					
Trespass	5	1		4				1				
Vagrancy	12	7	3	2				6		1		
Violating A. B. C. Act	1	1								1		
Violating Election Law	2		1	1								
Violating Game Law	1			1								
Violating Highway Law	2	1	1							1		

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Violating Prohibition Law	10	4	2	4				1		3	
Violating Rabies Law	1		1								
Violating Revenue Law	1			1							
Violating Uniform Accounting Act	4				4						
TOTALS	365	273	29	48	15		180	44	1	45	3

. *Incomplete.
**Succeeded by James Tompkins, Jan., 1940.
**Succeeded by James E. Smith, Jr., June, 1942.

TWELFTH JUDICIAL CIRCUIT—J. A. Huey, Solicitor											
Abusive Language	13	7	3	3				5		2	
Adultery	8	7		1				7			

Arson	4	1	2	1			1				
Assault & Battery	42	35	4	3				30		5	
Assault to Murder	37	29	4	4			29				
Assault to Rape	1	1					1				
Assault to Rob	5	5					5				
Assessory after the Fact	2	1			1			1			
Bastardy	3	2		1						2	
Bigamy	2	1	1				1				
Burglary	56	44	2	10			44				
Buying, Rec., Concl. Stolen Prop.	5	4			1		1	3			
Carnal Knowledge	7	3	3	1			3				
Desertion	3	1		2						1	
Distilling	19	19					19				
Driving while Intoxicated	15	12	1	2				9		3	
Embezzlement	3	1		2			1				
Escape	6	5		1				4		1	
False Entry in Bank Ledger	3	2		1			2				
False Pretense	5	2	2	1			1			1	
Flogging while Masked	1		1								
Forgery	13	8	1	4			8				
Grand Larceny	62	42	7	13			42				
Influencing Witness	1			1							
Issuing Worthless Check	2	2								2	
Leaving Scene of Accident	2		2								
Malicious Injury to Prop.	2	2						2			
Malicious Mischief	1			1							
Manslaughter	15	11	1	3			9	2			
Mayhem	1		1								
Murder	20	16	4			1	15				
Obtaining Signature by Fraud	2		2								
Operating Gambling Device	16	14		2				1		13	
Perjury	1	1					1				

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWELFTH JUDICIAL CIRCUIT—(Continued)											
Petit Larceny	16	7	1	8				7			
Presenting Firearms	3	3						2		1	
Public Drunkenness	8	4	2	2				3			
Rape	5	4	1			1	3				
Reckless Driving	6	4	2					3		1	
Robbery	5	5					5				
Selling Mortgaged Property	6	3	2	1			2	1			
Transporting Whiskey	33	29		4			29				
Using Car Without Consent	1	1						1			
Vagrancy	1	1						1			
Violating Game & Fish Law	3			3							
Violating Highway Law	2	1	1					1			
Violating Motor Carrier Act	2	1		1						1	
Violating Prohibition Law	94	70	3	20	1			56		15	
Violating Stock Law	2		1	1							

Violating Uniform Firearms Act	5	2		3				1		1	
TOTALS	570	413	54	100	3	2	223	140		50	
THIRTEENTH JUDICIAL CIRCUIT— Bart B. Chamberlain, Solicitor											
Abusive Language	16	12	1	3					5	7	
Adultery	9	3	1	4	1				2	1	
Affray	16	5	1	10					3	2	
Aiding Felon to Escape	3	3					1	1	1		
Altering Brand	1	1							1		
Arson	7	2	4	1			2				
Assault	39	19	7	11	2			2	13	4	
Assault & Battery	234	159	22	37	16			19	104	36	
Assault to Murder	89	48	14	15	12		42	2	3	1	
Assault to Rape	13	9	3		1		8			1	
Assault to Rob	32	30	1	1			30				
Assault with a Weapon	119	91	5	16	7		2	21	53	15	
Attempt to Commit a Felony	40	37	2	1				9	27	1	
Bastardy	34	15	6	10	3			12	1	2	
Bigamy	3	2		1			1			1	
Burglary	373	297	8	14	54		285	1	11		
Buying, receiving, concealing stolen property	70	48	3	8	11		16	4	25	3	
Carnal Knowledge	20	4	2	7	7		4				
Carrying Concealed Weapon	43	25	3	10	5			7	10	8	
Conspiracy	56	18		36	2		1	2	6	9	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
THIRTEENTH JUDICIAL CIRCUIT—(Continued)											
Contempt of Court	2	2							2		
Contributing to Delinquency	2	1	1							1	
Crime Against Nature	12	6		2	4		6				
Decoying Child	1	1						1			
Defacing Public Property	8	5		2	1		1		4		
Disorderly Conduct	17	8	3	6					1	7	
Driving while Intoxicated	294	191	31	46	26			11	47	133	
Embezzlement	29	17		6	6		11	3	1	2	
Failure to keep proper reports	12			1	11						
Failure to re-deliver hired vehicle	6	3		1	2					3	
False Pretense	15	4		6	5		1		3		
Forgery	178	96		64	18		87	5	3	1	
Gaming	9	3	3	3				1		2	
Grand Larceny	356	273	21	42	20		238	10	21	4	
Indecent Exposure	12	6		5	1			2	2	2	
Issuing Worthless Check	47	35		8	4			1	21	13	

Leaving Scene of Accident	97	51	15	20	11		2	8	23	18	
Loitering in Automobile	3	3							1	2	
Malicious injury to Animal	3		1	2							
Malicious injury to Prop.	30	25	1	4			2	1	9	13	
Malicious Mischief	1			1							
Manslaughter	63	45	3	11	4		21	5	16	3	
Mayhem	1		1								
Molesting Female	1	1							1		
Miscegenation	2	2					1			1	
Murder	74	49	10	6	9	8	41				
Obstructing Sidewalk	1	1								1	
Obtaining Drug by Fraud	3	1		2			1				
Obtaining Money by False Pretenses	8	5		1	2		1	1	3		
Operating Slot Machine	111	107	1	3						107	
Perjury	11	1		10			1				
Petty Larceny	295	240	13	30	12		2	63	170	5	
Picketing	5		4	1							
Presenting Firearms	12	8	1	3				1	3	4	
Public Drunkenness	13	6		7					3	3	
Rape	12	8	1	1	2	3	5				
Reckless Driving	101	81	4	13	3				20	61	
Resisting Officer	11	8		3					4	4	
Robbery	74	30	10	30	4		29			1	
Setting Woods Afire	1				1						
Selling Mortgaged Prop.	2	1		1						1	
Shooting into Dwelling	1	1								1	
Sodomy	2	1	1				1				
Threats	3	2		1				1	1		
Transporting Liquor	8	5	2	1			5				
Trespass	22	12	2	5	3		1		6	5	
Using car without owner's consent	25	22	1	1	1			3	15	4	
Vagrancy	369	283	46	27	13			34	171	78	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
THIRTEENTH JUDICIAL CIRCUIT—(Continued)											
Viol. Ala. Beverage Act	88	78	6	3	1			13	58	7	
Viol. Barber Act	6	5		1					4	1	
Viol. Game & Fish Law	45	10	11	21	3				2	8	
Viol. Health Law	1	1								1	
Viol. Highway Law	29	16	6	6	1			1	10	5	
Viol. Lottery Law	43	6	5	32				5	1		
Viol. Marihuana Act	1		1								
Viol. Prohibition Law	153	69	15	61	8		2	7	60		
Viol. Revenue Law	4	3		1					2	1	
Viol. Stock Law	7	5		2						5	
Viol. Unemployment Compensation Law	2	2						2			
TOTALS	3,961	2,673	303	686	297	11	851	259	953	599	

FOURTEENTH JUDICIAL CIRCIUT— Still Hunter, Solicitor											
Abusive Language	49	28	3	18				4	6	18	
Adultery	16	8	1	7				3	1	4	
Aiding prisoner to escape	3	1	2						1		
Arson	5	1	2	2			1				
Assault & Battery	141	97	10	33	1			29	10	58	2
Assault to Murder	38	13	4	19	2		13				
Assault to Rape	2	1		1				1			
Assault With Weapon	6	2	1	3				1		1	
Attempt to Burglarize	5	2		3				2			
Attempt to Commit Grand Larceny	2	1		1					1		
Attempt to Commit Perjury	1	1							1		
Attempt to Distill	40	40						1		39	1
Attempt to Forge	2	2						2			
Bastardy	20	7	3	7	3			3		4	
Bigamy	4	3		1			3				
Boycotting	1			1							
Bribery of witness	1		1								
Burning Woods	5	4	1							4	
Burglary	50	40	2	7	1		40				
Buying, receiving, concealing stolen property	10	7	1	2			4		2	1	
Carnal Knowledge	9	2	3	4			2				
Carrying Concealed Weapon	6	1	1	4						1	
Contempt of Court	2	2								2	
Contributing to Delinquency of Child	1	1						1			
Crime against nature	1			1							
Defacing Jail	1	1						1			

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FOURTEENTH JUDICIAL CIRCUIT—(Continued)											
Distilling	125	96	4	19	6		79	9			8
Disturbing Public Worship	2	1	1							1	
Driving While Intoxicated	38	20	5	13				6	2	11	1
Embezzlement	6	3	1	2			2	1			
Failure to report buying scrap	1			1							
False Pretense	4	2		1	1		2				
Forgery	21	17		4			11	3	1	1	1
Fraudulent Check	3	1		2				1			
Gambling	6	2		4						2	
Grand Larceny	80	48	6	24	2		47				1
Incest	8	6	1	1			6				
Kidnapping	1			1							
Leaving Scene of Accident	17	8		9				2		6	
Malicious Injury	1	1								1	
Malicious Injury to Animal	1			1							
Malicious Injury to Property	2			2							
Manslaughter	25	24		1			16	3	3	2	

Murder	21	15	4	1	1		15				
Non-Support	16	4	3	8	1			2		2	
Peace Proceedings	2		1	1							
Permitting Minor to Play Pool	5	1		4						1	
Petit Larceny	59	40	3	14	2		2	9	11	16	3
Possessing Still	5	5					5				
Presenting Firearms	1	1									1
Public Drunkenness	73	50	1	21	2			6	4	37	3
Rape	2	2					2				
Reckless Driving	45	24	3	18				1		26	
Removing Gravestone	1			1							
Resisting Officer	3	1		2				1			
Robbery	3	3					3				
Seduction	5	1		4							1
Selling Mortgaged Property	5	1		4				1			
Setting off Dynamite	2	2					2				
Threatening to Use Knife	1			1							
Transporting Liquor	8	4		3	1		2				2
Trespass	10	5	3	2			1	1		3	
Unlawful interference with work	1			1							
Unlawfully presenting gun	3	2			1			2			
Using car without consent of owner	2	2								2	
Vagrancy	37	17	2	18							
Violating Anti-Rabies Law	2		1	1				6	6	5	
Violating Election Law	16	4	3	9						4	
Violating Game & Fish Law	5	1	2	2						1	
Violating Highway Law	5	4		1						4	
Violating Motor Vehicle Law	4	1	2	1						1	
Violating P. L.	338	201	20	111	6			57	15	177	2
Violating Revenue Law	4		1	3							
Violating Stock Law	3			3							

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
FOURTEENTH JUDICIAL CIRCUIT—(Continued)											
Violating Sunday Law	1			1							
TOTALS	1,449	885	103	432	29		258	161	64	433	26
FIFTEENTH JUDICIAL CIRCUIT—W. T. Seibels, Solicitor											
Abusive Language	5			5							
Arson, 1st Degree	9	6	1	2			4				2
Arson, 3rd Degree	1	1						1			
Assault and Battery	67	60		7				40	1	19	
Assault to Murder	135	87	11	37			58				29
Assault to Ravish	9	7	1	1			7				

Bigamy	1	1					1				
Burglary	65	59	2	4			52				7
Burglary from Automobile	10	8		2			8				
Carnal Knowledge	6	4	1	1			4				
Carrying Concealed Weapon	34	11	2	21				8		3	
Crime Against Nature	1		1								
Disposing of mortgaged property	3	2		1			2				
Driving While Intoxicated	4	2		2				1		1	
Embezzlement	15	10	1	4			5				5
False Pretense	20	7		13			4				3
Forgery	56	35	1	20			32				3
Grand Larceny	624	529	18	77	1		423				106
Incest	1	1					1				
Issuing Bad Check	1			1							
Leaving Scene of Accident	2		2								
Manslaughter, 1st Degree	30	30					30				
Manslaughter, 2nd Degree	11	9		2				7		2	
Manufacturing Liquors	190	150	13	27			68				82
Murder, 1st Degree	47	25	13	9		4	21				
Murder, 2nd Degree	30	30					30				
Obtaining Money by False Impersonation	3	2		1			1			1	
Operating Gaming Device	1	1								1	
Operating Slot Machines	4	3		1						3	
Perjury	3			3							
Petit Larceny	32	26		6				19		7	
Presenting Firearms	5	1		4				1			
Rape	11	4	4	3			4				
Receiving Stolen Property or Mortgage	16	8	3	5			5				3
Reckless Driving	6	2		4						1	1
Robbery	35	17	4	14			17				
Seduction	1			1							
Transporting Liquor	28	22		6			18				4

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Vagrancy	14	6		8				4	1	1	
Violating Game Law	2			2							
Violating Highway Law	5	5						3	1	1	
Violating Prohibition Law	12	7	2	3				4	2	1	
Violating Agricultural Law	1	1								1	
Violating Narcotic Law	1			1							
TOTALS	1,531	1,152	80	298	1	4	885	87	5	43	228
SIXTEENTH JUDICIAL CIRCUIT Frank Embry, Solicitor											
Abusive Language	22	4	13	5				1		3	
Adultery	13	3	1	8	1			3			
Affray	5			4	1						

Arson	12	4	1	7			3	1			
Assault and Battery	66	22	12	28	4		3	10		9	
Assault and Battery With Weapon	1				1						
Assault With Intent to Murder	79	18	12	46	3		16			2	
Assault With Intent to Rob	8	4			4		4				
Assault to Ravish	8	3	2	1	2		2	1			
Assault With Weapon	3	2		1			1			1	
Attempt to Commit Burglary	1			1							
Attempt to Commit Forgery	1	1									
Attempt to Manufacture Whiskey	2	1		1						1	
Bastardy	22	9	1	10	2		4		1	4	
Bigamy	7	4	1	1	1		3	1			
Breach of Peace	1			1							
Bribery	1			1							
Burglary	170	119	7	42	2		116	2		1	
Carnal Knowledge	25	6	1	18			6				
Carrying Concealed Weapon	3	2	1					2			
Carrying Pistol on Premises Not His Own	1		1								
Carrying Pistol Without Permit	2	1		1				1			
Concealing Felon	1			1							
Conspiracy	2	1		1							
Conspiracy to Commit Felony	2			2							
Crime Against Nature	1	1					1				
Decoying Away Child	1			1							
Desertion and Non-Support	1			1							
Destroying Personal Property	1		1								
Distilling	103	87		16			76	11			
Driving Car Without Consent of Owner	1	1						1			
Driving While Intoxicated	26	9	2	14	1			4		5	
Doing Business Without License	1			1							
Embezzlement	13	2	4	7			1		1		
Failing to Burn or Bury Carcass	1		1								

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SIXTEENTH JUDICIAL CIRCUIT—(Continued)											
False Pretense	20	3	6	11			3				
Forgery	58	35	2	20	1		33	2			
Forfeiture	2	2								2	
Gambling Device	84	13	5	63	3			1	8	4	
Gaming	18			18							
Giving Worthless Check	4	3		1				1	1	1	
Grand Larceny and Receiving Stolen Property	119	58	17	40	4		54	1	2	1	
Hunting on Land Without Permit	2			2							
Hunting Out of Season	1			1							
Hunting Without License	3			3							
Improper Tag	1			1							
Incest	4	2	2				2				
Indecent Exposure	1	1								1	
Issuing Bad Check	4		1	4							
Jail Breaking	2	1		1					1		
Leaving Scene of Accident	3		1	2							
Malicious Injury to Animal	5	1	2	2						1	

Malicious Injury to Fire Alarm	1		1								
Manslaughter	26	20	2	4			19	1			
Murder	23	13	7	2	1		13			2	
Non-Support	3	2		1							
Operating Car on Public Highway Without Lighted Lamp	1			1							
Operating Dance Hall Without License	2	1					1				
Operating Gambling Device											
Operating House of Prostitution	2	1		1						1	
Operating Motor Vehicle Without Proper Brakes	1			1							
Operating Rolling Store Without License	1			1							
Peace Proceeding	5			5							
Perjury	2			2							
Petit Larceny	39	16	5	18				10		6	
Public Drunkenness	35	16	2	15	2		1	3		12	
Rape	11	4	2	5			4				
Reckless Driving	19	8	3	8				4		4	
Resisting an Officer	6	2		4				1		1	
Removing Personal Property	1			1							
Robbery	3	2		1				2			
Seduction	6	1		5			1				
Selling Liquor on Election Day	1	1						1			
Selling Mortgaged Property	7	3		4				3			
Shooting Dwelling House	1			1							
Taking Girl Under 14 Years of Age for Marriage or Prostitution	1		1								
Throwing Stone at Dwelling	1		1								
Throwing Stink Bomb	1		1								
Trespass	16	2	3	11				1		1	
Trespass After Warning											
Trespassing and Cutting and Removing Timber	1			1							
Unlawfully Presenting Firearms	1	1						1			
Unlawfully Selling Milk Bottles	1			1							

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SIXTEENTH JUDICIAL CIRCUIT—(Continued)											
Using Nets to Catch Fish	1	1								1	
Using Nets to Catch Fish Within One Mile of Dam	1	1								1	
Vagrancy	13	5		8			1	4			
Violating Game Law	3	2	1					2			
Violating Highway Law	2			2							
Violating Narcotic Law	1	1					1				
Violating Prohibition Law	167	78	13	75	1		50	14		14	
Violating Revenue Law	1			1							
Violating Stock Law	1			1							
TOTALS	1,347	604	139	570	34		419	90	14	81	
SEVENTEENTH JUDICIAL CIRCUIT J. F. Aldridge, Solicitor*											
Abusive Language	7	6		1				3		3	

Arson	5	3	1	1			3				
Assault and Battery	36	31		4			4	5		22	
Assault to Murder	81	58	3	19			53			5	
Assault with a Weapon	58	49		9			15			34	
Attempt to Bribe an Officer	1	1					1				
Attempt to Distill	209	201		7	1			5		196	
Attempt to Rob	3	3					3				
Bastardy	2		1	1							
Burglary	72	64	2	6			64				
Buying, Receiving, Concealing Stolen Property	2	1		1			1				
Carnal Knowledge	2	1	1				1				
Carrying Concealed Weapon	55	38	2	13	2			12		26	
Crime against Nature	1	1									
Decoying away a Child	1			1							
Disposing of Mortgaged Property	4	2		2			1	1			
Distilling	115	97	1	14	3		86			11	
Disturbing Public Worship	6	2		4						2	
Disturbing a Woman	2	1		1						1	
Driving while Intoxicated	5	4	1					1			
Embezzlement	2	1		1			1				
Escape	7	4	1	2				4			
False Pretense	4	1		3				1			
Forgery	6	4		1	1		2	2			
Fraudulently Bringing Property into Alabama	1	1						1			
Grand Larceny	136	92	17	27			79	2		7	4
Issuing Bad Check	4	1		2	1					1	
Leaving Scene of Accident	1	1					1				
Letting Stock Run at Large	1		1								
Malicious Injury to Animal	1			1							
Malicious Injury to Property	1			1							
Manslaughter	13	12		1			8	2		2	
Manufacturing Liquors	10	9		1			9				

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
SEVENTEENTH JUDICIAL CIRCUIT—(Continued)											
Murder	38	32	3	3		1	31				
Non-Support	1		1								
Perjury	2		1	1							
Petit Larceny	24	21		3				9		12	
Practicing Medicine without certificate	2	2						2			
Presenting Firearms	8	5	1	2				1		4	
Public Drunkenness	6	3		3				1		2	
Rape	4	4					4				
Receiving Stolen Property	12	10	1	1				9		1	
Reckless Driving	9	6	2	1						5	
Robbery	7	2		5			2				
Selling Mortgaged Property	3	2		1				2			
Threatened Use of Deadly Weapon	2	2								2	
Trespass	7	6	1				1		1	4	
Violating Agricultural Law	1	1								1	
Violating Game Law	14		3	11							
Violating Motor Carrier Law	2			2							
Violating Ordinance	16			16							

Violating Prohibition Law	106	87	1	14	4			14		73	
Violating Revenue Law	1			1							
Violating Stock Law	2	2									
TOTALS	1,123	874	30	205	14	1	370	77	2	420	4

*Succeeded by Ira D. Pruitt—December, 1940.

EIGHTEENTH JUDICIAL CIRCUIT
A. L. Hardegree, Solicitor

Abusive Language	11	7	1	3				2		5	
Adultery	1			1							
Arson	2	2					2				
Assault	5	4		1				1		3	
Assault and Battery	16	9	2	5				4		5	
Assault with Intent to Murder	14	8	1	5			8				
Assault with Intent to Rape	4	1		3			1				
Assault with Weapon	13	13						13			
Attempt to Distill	75	75								75	
Bastardy	13	7	1	5				6		1	
Bigamy	3	3					3				
Burglary	26	21		4	1		21				
Buying, Receiving, Concealing Stolen Property	2	2					2				
Carnal Knowledge	6	3	1	2			3				
Carrying Concealed Weapon	3	1	1		1			1			
Contributing to Delinquency of Female Child	1	1						1			
Disposing of Mortgaged Property	2	2					1	1			

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
EIGHTEENTH JUDICIAL CIRCUIT—(Continued)											
Distilling	224	206	10	6	2		206				
Disturbing Peace	7	5		2			2	3			1
Driving While Intoxicated	13	8	1	3	1			5		3	
Embezzlement	4		1	3							
Escape—Jail	3	2		1				2			
False Pretenses	12	4		8			3			1	
Forgery	1	1					1				
Gaming	3	3								3	
Grand Larceny	38	29	1	8			29				
Incest	1	1					1				
Leaving Scene of Accident	3	2		1				1		1	
Manslaughter	9	7	2				5	2			
Murder 1st Degree	5	4		1		2	2				
Murder 2nd Degree	17	13	3	1			13				
Non-support	1			1							
Petit Larceny	16	8	4	4				5		3	
Presenting Firearms	1	1								1	

Public Drunkenness	4	4						1		3	
Rape	9	5	1	2	1		5				
Reckless Driving	7	4		2	1					4	
Robbery	9	5	2	2			5				
Seduction	2	1		1			1				
Vagrancy	7	5		2			2	2		1	
Violating Prohibition Law	78	49	12	15	2		5	29		15	
Violating Health Law	1	1								1	
Violating Highway Law	6	3		1	2			2		1	
Violating Game Law	9	3	2	4						3	
Violating Narcotic Law	1			1							
Violating Sunday Law	1	1								1	
TOTALS	687	534	47	95	11	2	319	82	1	130	1

NINETEENTH JUDICIAL CIRCUIT
Winston Huddleston, Solicitor

Abandonment											
Abortion											
Abusive Language	65	24		41				13		11	
Adultery	9	2		6	1					2	
Affray											
Arson	7	7					7				
Assault	4	3		1				1		2	
Assault and Battery	149	63	7	78	1			30		33	
Assault to Murder	100	55	6	38	1		42	7		6	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
NINETEENTH JUDICIAL CIRCUIT—(Continued)											
Assault to Rape	15	10	2	3			10				
Assault to Rob	1		1								
Assault with Weapon	1	1								1	
Attempt to Burglarize											
Attempt to commit Grand Larceny											
Attempt to Distill	1	1								1	
Bastardy	15	2	2	2	9			1		1	
Betting at Cards											
Bigamy	3	3					3				
Breaking Fence											
Burglary	104	70	3	31			70				
Buying, receiving, concealing stolen property	4	2		2				1		1	
Carnal Knowledge	8	6		2			6				
Carrying Concealed Weapon	10	5		5				4		1	
Carrying Pistol Without License	3			3							

Crime against Nature	8			8							
Defaulting Witness											
Distilling	148	128	2	13	5		126	1		1	
Disturbing Public Worship	3	1		2				1			
Driving while Intoxicated	38	21		15	2			10		11	
Embezzlement	8	3	1	4				2		1	
Enticing away Servant											
Escape	5	5						4		1	
Failure to bury dead animal											
Failure to inoculate dog	10	2	2	6				1		1	
False Pretense	7	2		3	2		2				
Forgery	11	7		4			7				
Fornication	4	1	2	1				1			
Fraudulent Check	23	1		22				1			
Gaming	20	16		4				4		12	
Grand Larceny	135	99	1	28	7		94		5		
Having interest in county funds											
Incest											
Injury to Public Property	6	4		2				4			
Indecent Conduct	4	4						4			
Keeping Gambling Machine	3	2		1						2	
Leaving Scene of Accident											
Malicious Injury to Animal	10	4		3	3		1	3			
Manslaughter	12	7		5			3	4			
Mayhem	2			2							
Misdemeanor											
Murder	50	42	3	5		1	41				
Nonsupport	6	1		4	1					1	
Perjury											
Petit Larceny	75	55	1	19				35		20	
Poisoning											
Presenting Firearms	15	4	2	9						4	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
NINETEENTH JUDICIAL CIRCUIT—(Continued)											
Public Drunkenness	85	61		21	3			21		40	
Rape	4	2		2			2				
Reckless Driving	29	13	3	12	1			4		9	
Resisting an Officer	3	3						3			
Robbery	15	10		5			8	1		1	
Seduction											
Selling mortgaged property	10	3	1	6			1	2			
Shooting along Road											
Shooting into Dwelling House	1	1						1			
Sodomy											
Throwing Rocks	4	2		2				2			
Transporting Liquor	35	22	6	6	1		18	3		1	
Trespass	17	5	1	11				3		2	
Using Car without Permission	4	2		2				1		1	
Vagrancy	13	2		11				2			

Violating ABC Act											
Violating Game Law	39	11	2	26			2	1		8	
Violating Highway Law	7	3		4				2		1	
Violating Motor Vehicle Law	1			1							
Violating Prohibition Law	348	193	6	142	7			91		102	
Violating Revenue Law	11	3	2	6				2		1	
TOTALS	1,728	999	56	629	44	1	443	271	5	279	

TWENTIETH JUDICIAL CIRCUIT
Keener Baxley, Solicitor

Abortion	5	1	2	1	1		1				
Abusive Language	8	4	1	3				1		3	
Adultery	3	2		1				2			1
Altering Brands	1			1							
Arson	8	3	1	2	2		3				
Assault and Battery	66	52	5	9			1	27		24	1
Assault to Murder	49	24	4	18	3		23	1			2
Assault to Rape	3	1		2			1				
Assault to Rob	2	1		1			1				
Attempt to Commit Felony	1	1					1				
Bastardy	6	1	2	3				1			
Bigamy	5	5					5				
Breach of Peace	3	1		2				1			
Burglary	59	45	5	7	2		45				1
Buying, Receiving, Concealing Stolen Property	8	4	1	3			1	1	1	1	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTIETH JUDICIAL CIRCUIT—(Continued)											
Carnal Knowledge	6	2	2	1	1		2				
Carrying Concealed Weapons	8	7		1				5		2	
Distilling	19	19					19				
Driving While Intoxicated	16	12	1	3				2	1	9	
Embezzlement	4	3	1				2			1	
Escape	3			2	1						
False Pretense	16	7	3	4	2		3	2		2	
Forgery	22	9	2	11			9				1
Gaming	2			2							
Grand Larceny	79	52	4	21	2		51	1			3
Issuing Worthless Check	3	1		1	1			1			
Leaving Scene of Accident	7	1	2	3	1			1			
Malicious Injury to Animals	2		2								
Malicious injury to Property	1		1								
Manslaughter	19	15	3	1			13	1	1		1

Murder	31	20	8	3			20				
Operating Gambling Device	8	8					1			7	1
Perjury	7	6	1				6				2
Petit Larceny	26	16		10			2	12		2	
Possessing Still	3	2		1			2				
Presenting Firearms	1	1								1	
Public Drunkenness	9	2	2	4	1			1		1	
Rape	2		2								
Reckless Driving	11	6	1	4				2		4	
Robbery	13	6	2	5			6				
Selling Mortgaged Property	6	3	2		1		3				
Shooting in Dwelling	1			1							
Sodomy	2	2					2				
Transporting Whiskey	5	5					5				
Taking Girl under 14 for Marriage	1		1								
Trespass	5	1	2	1	1			1			
Using Car Without Owner's Consent	2	1	1					1			
Vagrancy	20	2	5	13				2			
Violating Alabama Beverage Control Act	2		1	1							
Violating Game and Fish Law	27	2	5	18	2					2	
Violating Highway Law	2				2						
Violating Narcotic Law	3			2	1						
Violating Prohibition Law	56	29	5	22				18		13	2
Violating Revenue Law	3	2			1					2	
Violating Sunday Law	1		1								
TOTALS	682	387	82	188	25		228	84	3	74	15

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTY-FIRST JUDICIAL CIRCUIT R. L. Jones, Solicitor											
Abusive Language	22	8		14				3		5	
Adultery	4	1		3						1	
Affray	1			1							
Aiding felon to escape	2	2					2				
Arson	6	3	1		2		3				
Assault and Battery	31	18		13				9	2	8	
Assault to Murder	34	24	2	6	2		24				
Assault to Rape	2	2					2				
Assault to Rob	4	4					4				
Assault with Weapon	46	31		14	1			7	3	23	
Assault and Battery with Weapon	28	16		12				6		10	
Attempt to Burglarize	3	3					1	2			
Attempt to Distill	5	5								5	
Breaking Fence	1	1						1			
Bastardy	2		1		1						

Burglary	102	84	1	12	5		84				1
Buying, receiving, concealing stolen property	11	7	1	3			2	2	2	2	
Buying seed cotton at night	2	1		1						1	
Carnal Knowledge	8	6		2			6				
Carrying Concealed Weapon	3			3							
Conspiracy to Commit Felony	1	1					1				
Decoying Away Child	2			2							
Distilling	29	27			2		27				2
Driving while Intoxicated	17	6	4	6	1			2		4	
Driving Without Lights	3	1		2						1	
Escape from Jail	4	4						4			
Failure to Inoculate Dog	5			5							
False Pretense	12	6	3	2	1		1	3	1	2	
Forgery	39	26		13			24		2		
Fraudulent Check	9	8		1				1		7	
Grand Larceny	95	67	4	3	11		67				6
Incest	1	1					1				
Keeping Gambling Device	14	8		6						8	
Leaving Scene of Accident	3	2		1				1		1	
Malicious Injury to Animal	21	9	3	9				3		6	
Malicious Injury to Property	4	3		1				1		2	
Malicious Setting Fire to Woods	1			1							
Manslaughter	22	17	1	4			16			1	
Murder	27	21	3	3			21				
Nonsupport	1	1								1	
Obstructing Public Highway	1			1							
Obtaining Board by Fraud	1			1							
Operating Gambling Device	3	2	1							2	
Petit Larceny	69	46	2	16	5			25	12	19	
Possessing Gambling Device	26				26						
Possession of Still	17	12	2	3			11				1
Practicing Dentistry without certificate	2				2						

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTY-FIRST JUDICIAL CIRCUIT—(Continued											
Presenting Firearms	2	2						2			
Public Drunkenness	39	21		18				4	2	15	
Putting out poison unlawfully	1		1								
Rape	1	1					1				
Reckless Driving	23	13		10				1		12	
Robbery	3	3					3				
Selling Mortgaged Property	3	2			1		1	1			
Shooting along Public Road	1			1							
Shooting into Dwelling	1	1					1				
Temporary Use of Automobile	6	5		1				3		2	
Transporting Liquor	1	1					1				
Trespass after Warning	10	4	1	5				1		3	
Unlawfully detaining child from parent	1			1							
Vagrancy	5	1		4				1			
Violating ABC Act	3	1		2						1	
Violating Drivers' License Law	2			2							
Violating Game and Fish Law	35	5	4	26				2		3	

Violating Highway Law	18			18							
Violating Motor Vehicle Law	3			3							
Violating P. L.	65	37	9	18	1			25		12	1
Violating Revenue Law	11	4		7				1		3	
Violating Stock Law	1			1							
Violating Sunday Law	5	5						1		4	
Violating Uniform Firearms Act	7	5	1	1				2		3	
TOTALS	993	595	45	292	61		303	115	24	268	11

TWENTY-SECOND JUDICIAL CIRCUIT—
F. J. Mizell, Solicitor

Abusive Language	14	3		11						3	
Adultery	3	2		1				2			
Arson	4		1	3							
Assault and Battery	51	28	4	18	1			12		16	
Assault to Murder	13	6		7			6				
Assault to Ravish	3	1	1	1			1				
Attempt to Commit a Felony	4			2	2						
Bastardy	7		1	4	2						
Burglary	10	8		1	1		8				
Buying, receiving, Concealing Stolen Property	12	6		6			2		1	3	
Carnal Knowledge	3			3							
Carrying Concealed Weapon	7	5		2				2		3	
Contempt	3	3								3	
Disposing of mortgaged property											

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTY-SECOND JUDICIAL CIRCUIT—(Continued)											
Driving While Intoxicated	10	9		1				3		6	
Embezzlement	4	2		2			2				
False Pretense	13	5	1	6	1		3	2			
Forgery	18	11		7			11				
Grand Larceny	67	47	3	16	1		47				
Illegal Practice of Medicine	3	1		2						1	
Incest	2	2					2				
Issuing Bad Check	22	8	4	6	4			4		4	
Kidnapping	1			1							
Malicious Injury	1		1								
Malicious Injury to Property	4	3		1				2		1	
Manslaughter	16	11		5			6	4		1	
Murder	15	7	4	2	2		7				
Non-support	4			4							
Obstructing Public Road	1		1								
Peace Proceedings	1			1							
Perjury	1				1						

Petit Larceny	25	18		7				16		2	
Presenting Firearms	6	4	1	1				2		2	
Public Drunkenness	8	5		3				2		3	
Receiving stolen property or mortgage											
Reckless Driving	20	12	2	6				2		10	
Robbery	4	4				1	3				
Trespass	11	5		5	1		2			3	
Using Car without Consent of Owner	1			1							
Vagrancy	2	1		1						1	
Violating ABC Act	10	8	1	1				1		7	
Violating Agricultural Code	1	1								1	
Violating Game & Fish Law	10	3	1	6						3	
Violating Highway Law	7	1	1	5						1	
Violating Motor Vehicle Law	2			2							
Violating Pharmacy Law	1				1						
Violating P. L.	71	38	3	28	2		7	6		26	
Violating Revenue Law	1	1								1	
TOTALS	502	276	31	176	19	1	105	67	2	107	
TWENTY THIRD JUDICIAL CIRCUIT— J. D. Smith, Solicitor											
Abusive Language	19	8	7	3	1			4		4	
Adultery	1		1								
Affray	3	2		1				2			
Arson	5	3	2				3				1

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTY-THIRD JUDICIAL CIRCUIT—(Continued)											
Assault	18	6	6	6				2		4	
Assault and Battery	36	18	10	8				9		9	2
Assault to Murder	25	16	5	4			6	5		5	1
Assault to Rape	4	3	1				2			1	
Assault to Rob	4	2	2				2				
Assault with Weapon	14	7	2	5				3		4	
Attempt to Commit Bigamy	2	2					1	1			
Attempt to Game	1	1								1	
Attempt to Sell Mortgaged Property	2	2								2	
Attempt to Transport Whiskey	1	1						1			
Attempt to V. P. L.	4	4						1		3	1
Bastardy	5	3	1	1				2		1	
Bigamy											
Burglary	67	58	3	6			58				1
Buying, selling, concealing stolen property	13	4	3	6			3			1	
Carnal Knowledge	1	1					1				
Carrying Weapon	17	14	1	1	1			2		12	

Driving While Intoxicated	86	71	5	7	3			19	7	45	3
Dynamiting Residence	1	1					1				
Embezzlement	19	4	13	2			2	1		1	
False Pretense	3	2						1		1	
Forgery	22	14	3	4	1		14				3
Fraudulent Check	6	5	1				2	3			
Gaming	9	3	2	4						3	
Grand Larceny	81	65	3	12	1		55	7		3	
Interfering with Officer	2	1	1							1	
Keeping gaming table	2	2						1		1	
Leaving Scene of Accident	6	2	1	2	1					2	
Malicious Destruction of Property	2		2								
Manslaughter	10	10					7	2	1		
Manufacturing Whiskey	9	8	1				7		1		2
Murder	26	18	6		2	1	17				1
Nonsupport	1			1							
Petit Larceny	33	21	1	11			1	19		1	
Presenting Firearms	2	1	1							1	
Possessing Slot Machine	1	1								1	1
Possessing Still	1	1					1				
Public Drunkenness	61	24	17	17	3					16	
Rape								8			1
Reckless Driving	23	18	3	2				2		16	
Resisting Officer	1	1						1			
Robbery	4	4					4				
Selling adulterated Sausage	2			1	1						
Selling Eggs without Label	4	3		1						3	
Selling Mortgaged Property	4		3		1						
Speeding	2	1	1							1	
Transporting Whiskey	7	6		1			5			1	1
Trespass	3	2		1				1		1	
Using Car without consent of owner	5	5						2		3	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1938-1942—(Continued)

JUDICIAL CIRCUITS	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTY-THIRD JUDICIAL CIRCUIT—(Continued)											
Using Horse without Owner's consent	1	1						1			
Vagrancy	3	1	2							1	
Violating Agricultural Code	1			1							
Violating Game and Fish Law	12	4	7	1				3		1	
Violating Highway Law	10	6	1	3				1		5	
Violating Motor Carrier Act	2		2								
Violating P. L.	260	190	27	38	5			61	25	104	15
Violating Rabies Act											
Violating Revenue Law	6	2	2	1							
Violating Stock Law	1			1							
Violating Unemployment Compensation Act	7		7								
TOTALS	988	658	156	154	20	1	192	170	34	261	33

TWENTY-FOURTH JUDICIAL CIRCUIT
J. C. Milner, Solicitor

Abusive Language	8	3		5						3	
Adultery	5	2		3			1	1			
Aiding Escape	1	1						1			
Assault and Battery	47	39	2	5	1			13		31	1
Assault to Murder	20	11		8	1		10	1			1
Assault to Ravish	1			1							
Attempt to Commit a Felony	21	20		1			1	1		18	2
Bastardy	3		1	1	1						
Bigamy	3	2		1			2				
Burglary	11	10		1			10				
Cruelty to Animals	1	1								1	
Defacing Jail	1	1							1		
Disturbing Assembly	5			5							
Driving while Intoxicated	6	4		1	1			1		3	
Embezzlement	2		1	1							
False Pretense	14	9		1	4						
Forgery	8	6		2			3	3			
Gaming	5		1	4							
Grand Larceny	33	21	3	8	1			21			
Issuing Bad Check	1			1							
Malicious Injury to Property	2	2								2	
Malicious Mischief	1		1								
Manslaughter	16	13		3			8	4		1	
Manufacturing Liquors	59	48	4	4	3		48				
Murder	21	10	5	6			10				
Operating Gaming Device	7	6		1						6	

GENERAL SUMMARY OF CASES IN CIRCUITS—1938-1942—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
TWENTY-FOURTH JUDICIAL CIRCUIT—(Continued)											
Operating Slot Machines	3			3							
Perjury	3	2	1				2				
Petit Larceny	26	20	4	2				10	3	9	
Presenting Firearms	3	1		2						1	
Public Drunkenness	23	17	1	5				1		17	1
Rape	2		2								
Receiving stolen Property	2	2					1	1			1
Reckless Driving	13	9	2	2				2		8	
Robbery	6	2	1	3			2				
Seduction	1			1							
Shooting into House	2	2								1	1
Selling Mortgaged Property	2	2					2				
Transporting Liquor	6	4		2			3	1			
Trespass	2			2							
Unlawfully Leaving Scene of Accident	1			1							
Unlawfully removing fence	1	1								1	
Vagrancy	1	1						1			
Violating Game Law	2		1	1							

Violating Prohibition Law	104	70	8	26				47	3	41	13
Violating Rabies Law	2	2								2	
Violating Stock Law	1			1							
Violating Uniform Firearms Act	7	5	1	1				1		4	
TOTALS	517	353	39	113	12		129	93	8	150	20

CIRCUIT COURT OF AUTAUGA COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Abusive Language	2	2						1		1	
Affray	1			1							
Arson	3	3					3				
Assault	1	1								1	
Assault and Battery	17	10	1	6				2		8	
Assault to Murder	51	30	2	19			19	6		5	
Assault to Rape	4	4					4				
Assault with Weapon	1	1								1	
Bastardy	1	1								1	
Bigamy	3	3					3				
Burglary	15	10	2	3			10				
Carnal Knowledge	1	1					1				
Carrying Concealed Weapon	2			2							
Distilling	65	56		9			56				
Disturbing Public Worship	2			2							
Embezzlement	1			1							
False Pretense	1			1							
Forgery	2	1		1			1				
Gaming	16	14		2				3		11	
Grand Larceny	56	39	1	16			36	3			

Malicious Injury to animal	5	3		1	1					3	
Manslaughter	4	3		1			1	2			
Murder	22	21		1			21				
Nonsupport	4	1		3						1	
Petit Larceny	11	11						6		5	
Public Drunkenness	2			2							
Reckless Driving	5	2		3				1		1	
Resisting an Officer	2	2						2			
Robbery	8	4		4			2	1		1	
Selling Mortgaged Property	2			2							
Transporting Liquor	2	2					2				
Trespass	4	3		1			1			2	
Using Car without Consent	1	1						1			
Vagrancy	3			3							
Violating Game Law	11	9	2					1		8	
Violating Highway Law	2	2						1		1	
Violating Prohibition Law	30	17	1	11	1			11		6	
TOTALS	363	257	9	95	2		160	41		56	

CIRCUIT COURT OF BALDWIN COUNTY

Abusive Language	5	2		3				1		1	
Affray	1			1							
Aiding Felon to Escape	2	2					2				
Arson	1				1						
Assault and Battery	10	9		1				3	2	4	
Assault to Murder	11	9	1	1			9				

CIRCUIT COURT OF BALDWIN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault to Rape	1	1					1				
Assault to Rob	4	4					4				
Assault with Weapon	14	11		3				1	3	9	
Attempt to Burglarize	2	2						2			
Burglary	40	36	1	2	1		36				1
Buying, receiving, concealing stolen property	3	3					1	1		1	
Carnal Knowledge	2	2					2				
Distilling	1	1					1				
Driving while Intoxicated	1	1						1			
Escape from Jail	4	4						4			
False Pretense	2	1	1					1			
Forgery	19	14		5			12		2		
Fraudulent Check	1	1								1	
Grand Larceny	25	22	2		1		22				6
Incest	1	1					1				
Malicious Injury to Animal	13	5	1	7				1		4	
Malicious Injury to Property	1	1						1			
Manslaughter	4	3		1			2			1	
Murder	8	6	1	1			6				
Obstructing Public Highway	1			1							

Petit Larceny	26	19		5	2			9	5	9	
Possessing Gambling Device	26				26						
Possession of Still	1	1					1				
Public Drunkenness	3	2		1						2	
Putting out poison unlawfully	1		1								
Rape	1	1					1				
Reckless Driving	6	2		4						2	
Robbery	3	3					3				
Shooting along Public Road	1			1							
Temporary Use of Automobile	1	1						1			
Trespass	5	2		3				1		1	
Unlawfully detaining child from parent	1			1							
Vagrancy	3	1		2				1			
Violating Game and Fish Law	20	3	1	16				2		1	
Violating Highway Law	11			11							
Violating P. L.	7	4	1	2				4			
Violating Revenue Law	4	3		1						3	
Violating Sunday Law	1	1								1	
Violating Uniform Firearms Act	2	2								2	
Violating A. B. C. Act	3	1		2						1	
TOTALS	303	187	10	75	31		104	34	12	42	7

CIRCUIT COURT OF BARBOUR COUNTY

Abusive Language	11	5	2	4						5	
Adultery	2	2						1		1	
Arson	14	10	1	3			10				

CIRCUIT COURT OF BARBOUR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault	1	1						1			
Assault and Battery	65	58	3	4			1	6		52	
Assault to Murder	29	18	5	4	2		18				
Assault to Rob	1	1					1				
Assault with Weapon	4	4						1		3	
Breaking Fence	1	1								1	
Burglary	21	19	2				19				
Buying, receiving, concealing stolen property	7	6		1			4	1		1	
Carnal Knowledge	2		1	1							
Carrying Concealed Weapon	8	5		3						5	
Distilling	48	38	5	5			38				
Disturbing Public Worship	2	2								2	
Driving While Intoxicated	15	14	1							14	
Enticing Away Servant	3	1		2						1	
Embezzlement	5			5							
Failure to inoculate Dog	2	1	1							1	
False Pretense	2	1	1							1	
Forgery	2	1	1				1				
Fraudulent Check	6	5		1						5	
Grand Larceny	50	35	7	8			34			1	

Leaving Scene of Accident	1	1					1				
Malicious Injury to Animal	2		1	1							
Manslaughter	5	2	1	2			2				
Murder	22	16	3	3		1	15				
Non-support	1	1								1	
Perjury	2			2							
Petit Larceny	29	22	5	2				10		13	
Presenting Firearms	5	3	1	1						3	
Public Drunkenness	31	24	3	4				4		20	
Reckless Driving	3	2	1							2	
Resisting an Officer	4	3		1				1		2	
Seduction	2		1	1							
Selling Mortgaged Property	3	1	1	1						1	
Shooting along Road	1			1							
Throwing Rocks	1		1								
Transporting Liquor	6	6					6				
Trespass	2	1		1						1	
Vagrancy	7	7						4		3	
Violating Game Law	2	1	1							1	
Violating Highway Law	1		1								
Violating P. L.	61	48	10	3				4		44	
Violating Revenue Law	1			1							
TOTALS	493	372	54	65	2	1	59	33		184	

CIRCUIT COURT OF BIBB COUNTY

Abusive Language	7	4		3				1		3	
Arson	1		1								

CIRCUIT COURT OF BIBB COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault and Battery	4	2	1	1				1		1	
Assault to Murder	11	6	2	3			5			1	
Assault to Rape	1			1							
Assault with a weapon	12	12						5	2	5	
Bastardy	1	1								1	
Burglary	4	4					4				
Carnal Knowledge	1			1							
Carrying Concealed Weapon	3			3							
Distilling	44	43		1			43				
Disturbing Public Worship	8	6		2				5	1		
Driving while Intoxicated	7	7						3	3	1	
Embezzlement	1	1					1				
Forgery	1	1					1				
Grand Larceny	21	17		4			17				
Issuing Worthless Check	1			1							
Kidnapping	1	1					1				
Manslaughter	7	5		2			4		1		
Murder	3	3					3				
Obtaining Money by False Pretense	1	1						1			
Perjury	1	1					1				

Petit Larceny	2	2							2		
Public Drunkenness	15	11	2	2					1	10	
Reckless Driving	5	4		1						4	
Removing Ballot Box from Booth	1	1						1			
Resisting Officer	1		1								
Robbery	2	1		1			1				
Seduction	1			1							
Transporting Liquor	2	2					2				
Trespass	1	1						1			
Violating Highway Law	1	1								1	
Violating Prohibition Law	24	18	2	4			1	11	2	4	
TOTALS	196	156	9	31			84	29	12	31	

CIRCUIT COURT OF BLOUNT COUNTY

Abusive Language	3	1	1	1				1			
Adultery	9	2	1	6				2			
Affray	4			4							
Arson	2	1		1			1				
Assault and Battery	18	3	5	8	2			2		1	
Assault with Intent to Murder	5	2	2	1			2				
Assault to Ravish	3	2		1			2				
Attempt to Commit Forgery	1	1								1	
Bastardy	3	2			1		1		1		
Bigamy	4	2	1		1		1	1			
Burglary	23	15		8			14			1	
Carrying Pistol on Premises not his own	1			1							

CIRCUIT COURT OF BLOUNT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Carrying Pistol without Permit	2	1		1				1			
Conspiracy to Commit Felony	2			2							
Desertion and Non-support	1			1							
Destroying Personal Property	1		1								
Distilling	34	32		2			32				
Driving Car without Consent of Owner	1	1						1			
Driving while Intoxicated	7	3		4				3			
Embezzlement	2		2								
False Pretense	5		2	3							
Forgery	10	4	1	4	1		4				
Gaming	7			7							
Giving Worthless Check	1	1						1			
Grand Larceny	20	9	3	7	1		9				
Hunting on land without permit	2			2							
Incest	2		2								
Issuing Bad Check	3			3							
Jail Breaking	2	1		1					1		
Leaving Scene of Accident	1		1								
Malicious Injury to Animal	2		1	1							
Manslaughter	2	1		1			1				

Operating Motor Vehicle without Proper Brakes	1			1							
Peace Proceeding	2			2							
Petit Larceny	17	10	1	6				6		4	
Public Drunkenness	8	2		6						2	
Rape	3		1	2							
Reckless Driving	2	2						1		1	
Resisting an Officer	1			1							
Removing Personal Property	1			1							
Selling Mortgaged Property	2	2						2			
Taking Girl under 14 years of age for purposes of Marriage or Prostitution	1		1								
Throwing Stone at Dwelling	1		1								
Trespass	2		2								
Vagrancy	8	2		6				2			
Violating Prohibition Law	14	6	1	7				3		3	
Violating Revenue Law	1			1							
TOTALS	247	108	30	103	6		67	26	2	13	

CIRCUIT COURT OF BULLOCK COUNTY

Abortion	1	1					1				
Abusive Language											
Arson											
Assault and Battery	18	16	1	1			1	3		12	
Assault to Murder	17	11	5	1			11				
Assault to Rape	1	1					1				
Assault to Rob											

CIRCUIT COURT OF BULLOCK COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault with Weapon	2	2						2			
Attempt to Burglarize											
Attempt to commit Grand Larceny											
Attempt to Distill											
Bastardy											
Bigamy											
Breaking Fence											
Burglary	21	12	6	3			12				
Burning Woods											
Buying, receiving, concealing stolen property	1	1					1				
Carnal Knowledge	3		2	1							
Carrying Concealed Weapon	3		2	1							
Carrying pistol without license	1	1								1	
Crime against nature	1	1					1				
Distilling	2	1	1				1				
Disturbing Public Worship											
Driving while Intoxicated	1	1								1	
Embezzlement	1		1								
Failure to bury dead animal	1		1								
False Pretense	7	6	1				3			3	

Forgery	5	5					4			1	
Fraudulent Check	1	1								1	
Grand Larceny	24	15	4	5			15				
Leaving scene of accident	1	1						1			
Malicious injury to Animal	1		1								
Malicious Setting Fire to Cotton											
Manslaughter	8	7		1			5	1		1	
Murder	18	15	2	1		1	14				
Petit Larceny	13	11	1	1			1	3		7	
Public Drunkenness	3	1		2						1	
Rape	4	1	1	2			1				
Reckless Driving											
Robbery	3	1		2			1				
Selling Mortgaged Property	3	1	2				1				
Transporting Liquor											
Trespass	1			1							
Vagrancy	1		1								
Violating Forestry Law											
Violating Game Law	8	1	6	1						1	
Violating Highway Law											
Violating Motor Vehicle Law											
Violating Prohibition Law	1			1							
Violating Revenue Law											
Violating Sunday Law											
TOTALS	176	114	38	24		1	74	10		29	

CIRCUIT COURT OF BUTLER COUNTY

Abusive Language	2			1	1						

CIRCUIT COURT OF BUTLER COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault and Battery	25	22		3				15		7	
Assault to Murder	31	9	4	17	1		9				
Assault to Rape	2	1		1			1				
Assault to Rob	1	1					1				
Assault with Weapon	4	2	1	1				2			
Attempt to Commit Grand Larceny	1	1								1	
Attempt to Distill	1			1							
Burglary	49	47		2			47				
Buying, Concealing, and Receiving Stolen Property	1			1							
Carnal Knowledge	2	1		1			1				
Carrying Concealed Weapons	1	1						1			
Distilling	20	16	1	3			16				
Driving While Intoxicated	15	5	2	8				1		4	
False Pretense	3	1		2			1				
Forgery	6	3		3			3				
Fraudulent Checks	1			1							
Grand Larceny	49	30	1	18			30				
Malicious Injury to Animals	1			1							
Manslaughter	15	8	2	5			8				
Murder	17	5	3	6	3		5				

Petit Larceny	5	5						4		1	
Public Drunkenness	5	3		2				1		2	
Reckless Driving	7	5		2						5	
Robbery	6	1		5			1				
Transporting Liquor	1				1						
Violating Forestry Law	2	1		1						1	
Violating Game Law	6			1	5						
Violating Highway Law	1			1							
Violating Motor Vehicle Law	3	2		1			1			1	
Violating Prohibition Law	31	11	3	16	1			3		8	
Violating Sunday Law	1			1							
TOTALS	315	181	17	105	12		124	27		30	

CIRCUIT COURT OF CALHOUN COUNTY

Abusive Language	4	1	2	1						1	
Adultery	2			2							
Arson	3	2	1				2				
Assault and Battery	24	13	5	6				6		7	
Assault to Murder	26	10	6	10			3	3		4	
Assault to Ravish	4	2	1		1		2				
Assault With Weapon	7	3		4				2		1	
Bastardy	4		2	2							
Bigamy	3	2		1			2				
Bribrey	1	1								1	
Burglary	76	55	5	10	6		52	2	1		
Buying, Concealing, Receiving Stolen Property	9	7		2			7				

CIRCUIT COURT OF CALHOUN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Carnal Knowledge	7	5		2			5				
Crime Against Nature	1	1					1				
Distilling	56	49	5	2			49				
Disturbing Public Worship	1			1							
Driving While Intoxicated	14	11		3				4		7	
Embezzlement	7	5	1	1			5				
Forgery	35	20	1	7	7		19	1			
Grand Larceny	139	114	12	13			112		1	1	
Keeping Gaming Table	1			1							
Leaving Scene of Accident	1			1							
Malicious Mischief	2			2							
Manslaughter	3	3					3				
Murder	31	12	11	7	1		11	1			
Non-Support	3			3							
Operating Gambling Device	4	3		1						3	
Peace Proceedings	1			1							
Petit Larceny	4	4							2	2	
Possessing Still	2		2								
Presenting Firearms	2		1	1							
Public Drunkenness	2			2							

Rape	5	1	1	3			1				
Reckless Driving	5	3		2						3	
Robbery	12	7	2	3			7				
Seduction	1			1							
Selling Mortgaged Property	1	1								1	
Throwing Acid	1		1								
Transporting Liquor	20	15	4	1			13			2	
Trespass After Warning	1			1							
Vagrancy	5	3		2			2	1			
Violating Carrier Act	1	1								1	
Violating Fish Law	2			2							
Violating Game Law	2			2							
Violating Highway Law	1			1							
Violating Prohibition Law	130	71	21	38			1	30	6	34	
Violating Revenue Law	1		1								
Violating Sales Tax Law	1			1							
TOTALS	668	425	85	143	15		297	50	10	68	

CIRCUIT COURT OF CHAMBERS COUNTY

Abusive Language	2			2							
Arson	22	16		6			16				
Assault and Battery	3	2	1					1		1	
Assault With Intent to Murder	19	14		3	2		12	1		1	
Assault With Weapon	13	12		1				7	1	4	
Bastardy	5	1	2	2				1			
Burglary	27	24	2		1		24				1

CIRCUIT COURT OF CHAMBERS COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Buying, Receiving, Concealing Stolen Property	3	1		2				1			
Carnal Knowledge	2	1		1			1				
Carrying Concealed Weapon	2	1		1						1	
Contributing to Delinquency of Female Child	2	2								2	
Distilling	28	23	1	3	1		22			1	2
Disturbing Peace	2		1	1							
Driving While Intoxicated	5	3		2						3	
Grand Larceny	34	24	3	7			24				
Incest	1	1					1				
Manslaughter	12	4	1	7			4				
Murder 1st Degree	16	10	4	2			10	2			
Murder 2nd Degree	14	11	2	1			11				
Operating Gambling Device	106			106							
Petit Larceny	3	1		2			1				
Presenting Firearms	1			1							
Public Drunkenness	3	2		1				1		1	
Perjury	1			1							
Rape	1	1					1				
Reckless Driving	4	3	1							2	
Robbery	3	3					3				

Sodomy	1	1					1				
Trespass	1			1							
Violating Prohibition Law	63	9	4	50			1	4		4	
Violating Game Law	3			3							
Violating Highway Law	2			1						1	
TOTALS	404	172	22	206	4		132	18	1	21	3

CIRCUIT COURT OF CHEROKEE COUNTY

Abusive Language	7			7							
Adultery	9			9							
Affray	1			1							
Arson	1			1							
Assault and Battery	8	3		5					1	2	
Assault to Murder	10	2		8			1			1	
Assault to Ravish	1			1							
Assault with Weapon	4	3		1						3	
Attempt to Commit Felony	1	1						1			
Bastardy	2			2							
Bigamy	2		1	1							
Breaking Jail	1	1						1			
Burglary	12	1	1	10			1				
Carnal Knowledge	2			2							
Carrying Concealed Weapon	2			2							
Criminal Abortion	2			2							
Decoying Away Child	1			1							
Destroying Monument	1	1						1			

CIRCUIT COURT OF CHEROKEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Distilling	26	9		17			9				
Disturbing Public Worship	5			5							
Driving While Intoxicated	1	1								1	
Embezzlement	1			1							
False Pretense	8	1		7						1	
Forgery	11	1		10			1				
Fraudulent Check	1			1							
Grand Larceny	14	2		12			2				
Incest	3			3							
Leaving Scene of Accident	1	1								1	
Malicious Mischief	2			2							
Manslaughter	2		2								
Murder	10	3	1	6			3				
Perjury	1			1							
Petit Larceny	10			10							
Public Drunkenness	4	1		3						1	
Rape	2	2					2				
Reckless Driving	8	6		2				1		5	
Robbery	3				3						
Seduction	3			3							

Selling Mortgaged Property	10			9			1				
Shooting Along Highway	2	1		1						1	
Transporting Liquor	7	2		5			2				
Trespass	2			2							
Violating Motor Vehicle Law	1			1							
Violating Prohibition Law	72	18	3	50	1			4	4	15	
TOTALS	277	61	8	204	4		22	8	5	31	

CIRCUIT COURT OF CHILTON COUNTY

Abusive Language	56	17		39				9		8	
Adultery	7	2		4	1					2	
Assault and Battery	97	34	3	59	1			14		20	
Assault to Murder	21	8	2	10	1		6	1		1	
Assault to Rape	2	2					2				
Attempt to Distill	1	1								1	
Bastardy	10	1	2	1	6			1			
Burglary	36	31		5			31				
Buying, receiving, concealing stolen property	2	1		1				1			
Carnal Knowledge	6	4		2			4				
Carrying Concealed Weapon	7	4		3				3		1	
Carrying Pistol Without License	3			3							
Distilling	57	48	2	3	4		46	1		1	
Disturbing Public Worship	1	1						1			
Driving while intoxicated	30	19		10	1			9		10	
Embezzlement	4	2		2				1		1	
Escape	4	4					2	2			

CIRCUIT COURT OF CHILTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Failure to Inoculate Dog	10	2	2	6				1		1	
False Pretense	6	2		2	2		2				
Forgery	3	2		1				2			
Fornication	4	1	2	1				1			
Fraudulent Check	20			20							
Gaming	4	2		2				1		1	
Grand Larceny	36	25		6	5		23	2			
Indecent Conduct	4	4						4			
Injury to Public Property	6	4		2				4			
Keeping Gambling Machine	3	2		1						2	
Malicious Injury to animal	5	1		2	2				1		
Manslaughter	5	2		3			1	1			
Murder	9	6	2	1			6				
Petit Larceny	49	32	1	15	1			21		11	
Presenting Firearms	15	4	2	9						4	
Public Drunkenness	80	60		18	2			20		40	
Rape	2	1		1			1				
Reckless Driving	19	10	2	6	1			2		8	
Resisting an Officer	1	1						1			
Robbery	7	6		1			6				

Selling Mortgaged Property	6	2		4			1	1			
Shooting into Dwelling	1	1						1			
Throwing Rocks	2	2						2			
Transporting Liquor	22	10	6	6			8	1		1	
Trespass	10	2	1	7				1		1	
Using Car Without Consent	3	1		2						1	
Violating A. B. C. Act	6	1		5				1			
Violating Game Law	20			20							
Violating Highway Law	3			3							
Violating Motor Vehicle Law	1			1							
Violating Prohibition Law	287	159	2	120	6			69		90	
Violating Revenue Law	5	1		4						1	
TOTALS	998	525	29	411	33		141	179		205	

CIRCUIT COURT OF CHOCTAW COUNTY

Abusive Language	5	3	1	1				2		1	
Arson	1			1							
Assault and Battery	10	4	2	4						4	
Assault with Weapon	2			2							
Attempt to Distill	2	1			1					1	
Bastardy	1	1								1	
Burglary	6	4		2			4				
Buying, receiving, concealing stolen property	2	1		1			1				
Carnal Knowledge	1			1							
Distilling	2	2					2				
Embezzlement	5		3	2							

CIRCUIT COURT OF CHOCTAW COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
False Pretense	1	1						1			
Forgery	2	2					2				
Fraud Board Bill	1			1							
Fraudulent Check	1			1							
Grand Larceny	27	16	1	10			16				
Lottery	3		1	2							
Malicious Injury to Animal	1	1							1		
Manslaughter	3	3					3				
Murder	6	6					6				
Operating dance hall without license	1			1							
Petit Larceny	14	4	1	6	3		2	1		1	
Possession of Still	2	2					2				
Presenting Firearms	1			1							
Public Drunkenness	3			3							
Reckless Driving	2	1		1						1	
Shooting along public road	1	1								1	
Transporting Liquor	1	1					1				
Trespass by cutting timber	3		3								
Vagrancy	1		1								
Violating Game and Fish Law	2	1		1						1	

Violating Motor Vehicle Law	2			2							
Violating Pistol Law	1	1						1			
Violating Prohibition Law	13	3		10						3	
Violating Revenue Law	1			1							
TOTALS	130	59	13	54	4		39	5	1	14	

CIRCUIT COURT OF CLARKE COUNTY

Abandonment of Family	1			1							
Abusive Language	2			2							
Aiding in Escape	1			1							
Arson	1		1								
Assault and Battery	10	8	1	1			1	1		6	
Assault to Murder	1		1								
Assault to Rob	1	1					1				
Assault with Weapon	7	5		2				2		4	
Attempt to Murder	4	3	1				2			1	
Attempt to Poison	1	1					1				
Bastardy	3	1		2			1				
Bigamy	1	1					1				
Burglary	15	14		1			14				
Buying, receiving, concealing stolen property	2			2							
Carnal Knowledge	1			1							
Carrying Concealed Weapon	1	1						1			
Distilling	32	24	3	5			24				
Disturbing Public Worship	2			2							
Driving while Intoxicated	1			1							

CIRCUIT COURT OF CLARKE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
False Pretense	5	1		4			1				
Forgery	4	3		1			2		1		
Fraudulent Check	7	2	1	4				2			
Grand Larceny	37	18	4	15			18				
Having still in possession	1	1					1				
Kidnapping	2		1	1							
Leaving Scene of Accident	2	1	1				1				
Maintaining Unlawful Drinking Place	8	2	1	5						2	
Malicious Injury to Animal	1				1						
Manslaughter	9	9					9				
Murder	10	9	1				9				
Operating Slot Machine	5	5								5	
Petit Larceny	16	7	4	5				1	2	4	
Presenting Firearms	1			1							
Public Drunkenness	8	5		3					2	3	
Rape	1			1							
Reckless Driving	2		1	1							
Resisting Officer	1			1							
Robbery	2		1	1							
Selling Mortgaged Property	2	1		1					1		

Sodomy	1			1							
Transporting Liquor	2	2					2				
Trespass after warning	2	1		1						1	
Using Motor vehicle without owner's consent	1	1								1	
Violating Election Law	1		1								
Violating Game and Fish Law	15	6	1	8						6	
Violating Highway Law	2			2							
Violating Prohibition Law	51	13	5	26	7		1			12	
TOTALS	286	146	29	103	8		89	7	6	45	

CIRCUIT COURT OF CLAY COUNTY

Abusive Language	2	1		1						1	
Adultery	1			1							
Assault	2	1		1						1	
Assault and Battery	9	4	2	3				2		2	
Assault with Intent to Murder	1	1					1				
Assault with Intent to Rape	2	1		1			1				
Assault with Weapon	2	2						2			
Attempt to Distill	9	9								9	
Bastardy	1	1								1	
Bigamy	2	2					2				
Burglary	5	5					5				1
Contributing to Delinquency of Female Child	1	1						1			
Carnal Knowledge	3	2		1			2				
Disposing of Mortgaged Property	1	1					1				
Distilling	45	41	3	1			41				9

CIRCUIT COURT OF CLAY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
False Pretense	1			1							
Grand Larceny	6	6					6				
Murder 1st Degree	3	2		1		2					
Murder 2nd Degree	2	2					2				
Petit Larceny	3	2		1				1		1	
Presenting Firearms	1	1								1	
Public Drunkenness	1	1								1	
Rape	3		1	1	1						
Robbery	2	2					2				
Seduction	2	1		1			1				
Vagrancy	3	1		2				1			
V. P. L.	19	10	5	4			1	6		3	1
TOTALS	132	100	11	20	1	2	65	13	0	20	11

CIRCUIT COURT OF CLEBURNE COUNTY

Abusive Language	2	2						1		1	

Adultery	3	1		2				1			
Arson	1		1								
Assault & Battery	7	4	2	1					1	3	
Assault to Murder	5	1	4				1				
Assault with Weapon	7	4	2	1				1		3	
Bigamy	1			1							
Burglary	3	3					3				
Distilling	68	58	4	5	1		58				
Driving While Intoxicated	4	2	2							2	
Forgery	1	1					1				
Grand Larceny	6	4	2				4				
Manslaughter	2	2					2				
Murder	4	3	1				3				
Presenting Firearms	1	1								1	
Public Drunkenness	1	1								1	
Reckless Driving	2	2								2	
Robbery	4	2	2				2				
Seduction	1			1							
V. P. L.	6	6						2		4	
Resisting Officer	1	1						1			
Kidnapping	4	3			1		3				
Shooting into Dwelling	2	2						2			
Distributing Liquor at Election	1			1							
TOTALS	137	103	20	12	2		77	8	1	17	

CIRCUIT COURT OF COFFEE COUNTY

Abusive Language	13	7	3	3				5		2	

CIRCUIT COURT OF COFFEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Adultery	8	7		1				7			
Arson	4	1	2	1			1				
Assault & Battery	33	27	3	3				23		4	
Assault to Murder	22	15	3	4			15				
Bastardy	3	2		1						2	
Bigamy	1	1					1				
Burglary	29	25	2	2			25				
Buying, Rec., Conc., Stolen Prop.	2	2						2			
Carnal Knowledge	6	3	2	1			3				
Desertion	3	1		2						1	
Distilling	3	3					3				
Driving while Intoxicated	8	6		1				5		1	
Embezzlement	3	1		2			1				
Escape	6	5		1				4		1	
False Pretense	5	2	2	1			1			1	
Flogging while masked	1		1								
Forgery	12	7	1	4			7				
Grand Larceny	23	15	5	3			15				
Influencing Witness	1			1							
Issuing Worthless Check	2	2								2	

Leaving Scene of Accident	2		2								
Malicious Injury to Property	2	2						2			
Malicious Mischief	1			1							
Manslaughter	9	7		1			5	2			
Mayhem	1		1								
Murder	7	7				1	6				
Operating Gambling Device	15	14		1				1		13	
Perjury	1	1					1				
Petit Larceny	14	5	1	8				5			
Presenting Firearms	2	2						2			
Public Drunkenness	7	3	2	2				3			
Rape	2	2				1	1				
Reckless Driving	6	4	2					3		1	
Robbery	1	1					1				
Selling Mortgaged Property	6	3	2	1			2	1			
Transporting Whiskey	23	21		2			21				
Vagrancy	1	1						1			
Violating Game & Fish Law	1			1							
Violating Highway Law	2	1	1					1			
Violating Motor Carrier Act	2	1		1						1	
Violating Prohibition Law	87	64	2	20	1			53		12	
Violating Stock Law	2		1	1							
Violating Uniform Firearms Act	4	2		2				1		1	
TOTALS	386	273	40	72	1	2	110	121		42	

CIRCUIT COURT OF COLBERT COUNTY

Arson	3	1		2			1				

CIRCUIT COURT OF COLBERT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault and Battery	9	5	1	3				3		2	
Assault to Murder	15	12		2	1		6	4		2	
Assault with Weapon	12	12						9		3	
Burglary	29	26		3			24	2			
Carnal Knowledge	2		1	1							
Disturbing Assembly	1	1								1	
Driving While Intoxicated	7	4	2	1				2		2	
Embezzlement	1	1					1				
False Pretense	10	7	1	2			7				
Forgery	3	3					2	1			
Grand Larceny	45	37	3	4	1		31	2		4	
Kidnapping	1	1					1				
Leaving Scene of Accident	4	3		1				2		1	
Manslaughter	1	1							1		
Manufacturing Liquors	26	21	3	2			15	1		2	3
Mayhem	1	1						1			
Miscegenation	2	2					2				
Murder	13	13					13				
Non-Support	2	2						2			
Perjury	2	2					2				

Petit Larceny	4	3		1			1	2			
Presenting Firearms	1				1						
Public Drunkenness	7	4	2	1						4	
Receiving stolen property	3	3					3				
Reckless Driving	21	17	2	2						17	
Robbery	2	2					2				
Transporting Liquor	4	3	1				3				
Trespass	5	1		4				1			
Vagrancy	12	7	3	2				6		1	
Violating A. B. C. Law	1	1								1	
Violating Game Law	1			1				1			
Violating Election Law	2		1	1							
Violating Highway Law	2	1	1							1	
Violating Prohibition Law	10	4	2	4				1		3	
Violating Rabies Law	1		1								
Violating Revenue Law	1			1							
Violating Uniform Accounting Act	4				4						
TOTALS	270	201	24	38	7		114	40	1	43	3

CIRCUIT COURT OF CONECUH COUNTY

Abusive Language	5	2		3						2	
Adultery	1			1							
Arson	2	1			1		1				
Assault and Battery	7	4		3				3		2	
Assault to Murder	8	6	1	1			6				
Assault with Weapon	3	2		1				1		1	

CIRCUIT COURT OF CONECUH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault and Battery with Weapon	9	5		4				2		3	
Attempt to Distill	3	3								3	
Breaking Fence	1	1						1			
Burglary	8	6		1	1		6				
Buying, receiving, concealing stolen property	1			1							
Carnal Knowledge	3	3					3				
Decoying Away Child	1			1							
Distilling	6	6					6				2
Driving without Light	1			1							
Forgery	6	2		4			2				
Fraudulent Check	1	1								1	
Grand Larceny	13	7		4	2		7				
Incest	1	1					1				
Leaving Scene of Accident	1			1							
Malicious Injury to Animal	6	3	2	1				2		1	
Manslaughter	4	3		1			3				
Murder	3	2		1			2				
Petit Larceny	11	6	1	4				4		4	
Possession of Still	6	4		2			3				1
Presenting Firearms	1	1						1			

Public Drunkenness	12	9		3				1		8	
Reckless Driving	3	3								3	
Selling Mortgaged Property	1	1						1			
Transporting Liquor	1	1					1				
Violating P. L.	16	12		4				11		1	1
TOTALS	145	95	4	42	4		41	27		29	4

CIRCUIT COURT OF COOSA COUNTY

Assault and Battery											
Assault with Intent to Murder	1	1					1				
Assault with Weapon	4	4						4			
Attempt to Distill	13	13								13	
Bastardy	4	4						4			
Bigamy	1	1					1				
Burglary	3	3					3				
Carrying Concealed Weapon	1	1						1			
Distilling	15	13	2				13				
False Pretense	3	2		1			2				
Forgery	1	1					1				
Grand Larceny	6	4		2			4				
Manslaughter 1st Degree	4	4					4				
Murder 1st Degree	2	2					2				
Murder 2nd Degree	3	2	1				2				
Petit Larceny	1		1								
Public Drunkness	2	2						1		1	
Rape	3	3					3				

CIRCUIT COURT OF COOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Reckless Driving	1				1						
Violating Prohibition Law	6	5		1				5			
Violating Game Law	1			1							
TOTALS	75	65	4	5	1	0	36	15	0	14	

CIRCUIT COURT OF COVINGTON COUNTY

Abusive Language	11	2		9						2	
Adultery	3	2		1				2			
Arson	3		1	2							
Assault and Battery	32	24		7	1			8		16	
Assault to Murder	10	4		6			4				
Assault to Rape	2		1	1							
Attempt to Commit Arson	1				1						
Attempt to Commit Forgery	2			2							

Attempt to Commit Murder	1				1						
Bastardy	6		1	3	2						
Burning Woods	1	1								1	
Burglary	3	2			1		2				
Buying, receiving, concealing stolen property	1	1								1	
Carnal Knowledge	1			1							
Carrying Concealed Weapon	7	5		2				2		3	
Driving while Intoxicated	3	3						2		1	
Failure to make Reports	1	1								1	
False Accusation	2			2							
False Pretense	8	4		3	1		2	2			
Forgery	17	11		6			11				
Fraudulent Check	16	6	2	4	4			3		3	
Gaming	1			1							
Grand Larceny	48	38	2	8			38				
Illegal Practice of Medicine	3	1		2						1	
Incest	2	2					2				
Malicious Injury	1		1								
Malicious Injury to Property	4	3		1				2		1	
Manslaughter	16	11		5			6	4		1	
Murder	11	5	4	2			5				
Nonsupport	4			4							
Peace Proceedings	1			1							
Perjury	1				1						
Petit Larceny	18	12		6				11		1	
Presenting Firearms	6	4	1	1				2		2	
Public Drunkenness	6	3		3						3	
Reckless Driving	18	10	2	6				2		8	
Resisting Officer	3	3						2		1	
Robbery	2	2					2				
Selling Mortgaged Property	3	1		2					1		
Trespass	3	1		1	1					1	

CIRCUIT COURT OF COVINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Using Car without consent of owner	1			1							
Vagrancy	1	1								1	
Violating Agricultural Code	1	1								1	
Violating ABC Act	6	6						1		5	
Violating Game and Fish Law	10	3	1	6						3	
Violating Highway Law	2			2							
Violating Motor Vehicle Law	3	3								3	
Violating Pharmacy Law	1				1						
Violating P. L.	50	28	2	20			5	1		23	
TOTALS	360	207	18	121	14		77	44	2	85	

CIRCUIT COURT OF CRENSHAW COUNTY

Abusive Language	6	3		2	1			3			
Arson	8	5	1	2			5				

Assault & Battery	18	11	1	5	1			5		6	
Assault to Murder	8	3		4	1		3				
Assault to Rob	1			1							
Assault with Weapon	2	2						2			
Attempt to Burglarize	2	2						1		1	
Bigamy	1	1					1				
Breaking Fence	1			1							
Burglary	13	5	1	6	1		5				
Burning Woods	1		1								
Buying, concealing, receiving stolen property	2	1		1			1				
Carnal Knowledge	2	1		1			1				
Carrying Concealed Weapon	1	1								1	
Distilling	38	31	2	4	1		30				1
Disturbing Public Worship	2	1	1					1			
Driving while Intoxicated	4	1		3				1			
Embezzlement	1			1							
False Pretense	4	2		2			2				
Forgery	10	3		7			3				
Fraudulent Check	3		1	2							
Grand Larceny	24	14		6	4		14				
Malicious Injury to Animal	1	1						1			
Maliciously Setting Fire to Cotton	1			1							
Manslaughter	3	3					3				
Murder	11	7		4			7				
Petty Larceny	8	7		1				4	3		
Public Drunkenness	7	5		1	1			3		2	
Reckless Driving	5	4		1				2		2	
Robbery	4	1	2	1			1				
Selling Mortgaged Property	1	1						1			
Trespass	1		1								
Violating Game Law	1			1							
V. P. L.	24	19	1	4				10		9	

CIRCUIT COURT OF CRENSHAW COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Violating Revenue Law	1			1							
TOTALS	220	135	12	63	10		76	34	3	21	1

CIRCUIT COURT OF CULLMAN COUNTY*

Abusive Language	2	1		1					1		
Adultery	4	3		1				1	1	1	
Arson	1		1								
Assault and Battery	3	1	1	1						1	
Assault to Murder	20	12		8			9			3	
Assault to Ravish	1	1					1				
Attempt to Aid Prisoners to Escape	2	1		1			1				
Bastardy	6	1		1	4					1	
Bigamy	1			1							
Burglary	18	13		4	1		13				

Carnal Knowledge	1	1					1				
Conspiracy	4	4								4	
Defaulting Witness	3			3							
Disorderly Conduct	6	1		5						1	
Driving While Intoxicated	41	31	3	6	1				13	18	
Embezzlement	7	1		6			1				
False Pretense	3			3							
Forgery	13	7		3	3		7				
Fraud	1	1					1				
Fraudulent Check	3			3							
Gaming	2			2							
Grand Larceny	14	8	1	5			6		1	1	
Impeachment Proceedings	1			1							
Incest	1	1					1				
Malicious Injury to Property	3	3						1	2		
Manslaughter	6	2		4				1		1	
Manufacturing Liquors	34	27	1	5	1		26			1	
Murder	4	2	2				2				
Perjury	1			1							
Petit Larceny	8	5		3			2	1		2	
Public Drunkenness	20	7		13					1	6	
Rape	1	1					1				
Receiving Stolen Property	5	1	3	1					1		
Reckless Driving	6	4		2						4	
Robbery	2	2					2				
Selling Mortgaged Property	5	2		3						2	
Seduction	2			1	1						
Transporting Liquor	1			1							
Trespass	1			1						1	
Vagrancy	8	3		5				2		1	
Violating A. B. C. Act	8	6		2						6	
Violating Agricultural Law	1	1								1	

CIRCUIT COURT OF CULLMAN COUNTY*—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Violating Highway Law	12	6		6					1	5	
Violating Prohibition Law	19	11		8				3	1	7	
Violating Narcotic Law	1	1					1				
TOTALS	306	172	12	111	11		75	9	22	67	

*Incomplete

CIRCUIT COURT OF DALE COUNTY

Abusive Language	12	7	3	2				1		6	
Affray	1			1						1	
Arson	1		1								
Assault and Battery	28	26	2					3		23	
Assault to Murder	8	7	1				4	2		1	
Attempt to Burglarize	2	2								2	
Attempt to place obstruction on Railroad Track	1	1								1	

Bastardy	1		1								
Bigamy	1	1						1			
Burglary	10	8	1	1			5			3	
Buying, receiving, concealing stolen property	1	1								1	
Carnal Knowledge	2	1	1				1				
Contempt of court	1	1								1	
Defaulting Witness	1	1								1	
Distilling	1	1								1	
Driving while Intoxicated	3	3						1		2	
Embezzlement	6	3		3						3	
Forgery	8	6		2			4	1		1	
Fraudulent Check	4	3		1						3	
Grand Larceny	15	13	1	1			12	1			
Having Interest in County Funds	2	1		1						1	
Incest	1	1					1				
Malicious Injury to Animal	2	1	1							1	
Manslaughter	8	8					4		1	3	
Murder	7	7					7				
Petit Larceny	15	14		1						14	
Public Drunkenness	2	2								2	
Reckless Driving	8	6	1	1						6	
Robbery	2	2					2				
Selling Mortgaged Property	1			1							
Trespass	4	1	3							1	
Using Car without Permission	3	3								3	
Violating Game Law	7	4	2	1						4	
Violating P. L.	35	25	3	7				1		24	
TOTALS	204	160	21	23			40	11	1	108	

CIRCUIT COURT OF DALLAS COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Adultery	1			1							
Arson	2	2					2				
Assault & Battery	3	2	1					2			
Assault to Murder	18	12	2	4			12				
Assault to Rape	1			1							
Assault with a Weapon	30	29		1				24	1	4	
Attempt to Commit a Felony	2	2						2			
Bigamy	2			2							
Burglary	76	71	1	2	2		71				
Buying, Receiving, Concealing Stolen Property	8	5		3			5				
Carrying Concealed Weapon	28	24		4				23	1		
Contempt of Court	1	1								1	
Defacing Public Property	1	1							1		
Distilling	122	119	1	2			119				
Embezzlement	4	4					4				
Forgery	9	8			1		8				
Gaming	2	2								2	
Grand Larceny	41	35	2	4			35				
Manslaughter	15	15					14		1		
Murder	19	16		3			16				

Obtaining Money by False Pretense	1				1						
Operating Slot Machine	3	3						1		2	
Petit Larceny	9	8	1					5	1	2	
Placing Obstruction on Rail Road Track	3	3					3				
Presenting Firearms	1	1						1			
Public Drunkenness	1			1							
Rape	1	1					1				
Reckless Driving	6	6						2		4	
Robbery	5	3		1	1		3				
Using Car without Owner's Consent	1	1								1	
Vagrancy	4	3		1						3	
Viol. Game & Fish Law	1			1							
Viol. Highway Law	2	2								2	
Viol. Prohibition Law	78	68	1	8	1			64	1	3	
TOTALS	501	447	9	39	6		293	124	6	24	

CIRCUIT COURT OF DeKALB COUNTY

Arson	2	1		1			1				
Assault	3	3						3			
Assault to Murder	19	3	4	10	2			3			
Assault to Ravish	6	2		4					2		
Assault to Rob	2			2							
Bastardy	4			4							
Bigamy	2	1	1				1				
Burglary	29	5	1	23			5				
Carnal Knowledge	1	1					1				

CIRCUIT COURT OF DeKALB COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Distilling	54	30	4	17	3		30				
Embezzlement	1	1					1				
Failing to pay for Cotton	4			4							
Failure to stop vehicle after accident	1			1							
False Pretense	4			4							
Forgery	7	2		5			1	1			
Grand Larceny	23	10	1	12			5	5			
Incest	2			2							
Manslaughter	3	1		2			1				
Miscegenation	1			1							
Murder	14	4	1	9			4				
Petit Larceny	1			1							
Seduction	4		1	3							
Selling Mortgaged Property	3		1	2							
Sodomy	1	1					1				
Voting Illegally	5			5							
TOTALS	199	65	14	114	6		51	12	2		

CIRCUIT COURT OF ELMORE COUNTY

Abusive Language	7	5		2				3		2	
Adultery	2			2							
Arson	4	4					4				
Assault	3	2		1				1		1	
Assault and Battery	35	19	3	13				14		5	
Assault to Murder	28	17	2	9			17				
Assault to Rape	9	4	2	5			4				
Assault to Rob	1		1								
Bastardy	4			1	3						
Burglary	51	29	1	21			29				
Buying, receiving, concealing stolen property	2	1		1						1	
Carnal Knowledge	1	1					1				
Carrying Concealed Weapon	1	1						1			
Crime Against Nature	8			8							
Distilling	26	24		1	1		24				
Driving while intoxicated	8	2		5	1			1		1	
Embezzlement	3	1	1	1				1			
Escape	1	1								1	
Forgery	6	4		2			4				
Fraudulent Check	3	1		2				1			
Grand Larceny	43	35		6	2		35				
Manslaughter	3	2		1			1	1			
Mayhem	2			2							
Murder	19	15	1	3		1	14				
Nonsupport	1				1						
Petit Larceny	15	12		3				8		4	
Public Drunkenness	3	1		1	1			1			
Rape	2	1		1			1				
Reckless Driving	5	1	1	3				1			

CIRCUIT COURT OF ELMORE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Selling Mortgaged Property	2	1	1					1			
Trowing Rocks	2			2							
Transporting Liquor	11	10			1		10				
Trespass	3			3							
Vagrancy	4	1		3				1			
Violating Game Law	8	5		3						5	
Violating Highway Law	2	1		1				1			
Violating Prohibition Law	28	17	3	8				11		6	
Violating Revenue Law	6	2	2	2				2			
TOTALS	362	221	18	114	10	1	144	49		26	

CIRCUIT COURT OF ESCAMBIA COUNTY

Abusive Language	6	2		4				1		1	
Adultery	2			2							

Arson	1	1					1				
Assault and Battery	12	5		7				3		2	
Assault to Murder	9	6		3			6				
Assault and Battery with Weapon	19	11		8				4		7	
Attempt to Burglarize	1	1					1				
Attempt to Distill	2	2								2	
Burglary	38	31		4	3		31				
Buying, receiving, concealing stolen property	6	4		2			1	1	2	1	
Buying seed cotton at night	1	1								1	
Carnal Knowledge	3	1		2			1				
Carrying Concealed Weapon	1			1							
Conspiracy to Commit Felony	1	1					1				
Distilling	1	1					1				
Driving while Intoxicated	11	4	3	3	1			1		3	
Driving without Lights	2	1		1						1	
Failure to inoculate dog	3			3							
False Pretense	6	5		1			1	2	1	2	
Forgery	12	8		4			8				
Fraudulent check	6	5		1						5	
Grand Larceny	35	24	2	4	5		24				
Keeping Gambling Device	14	8		6						8	
Leaving Scene of Accident	1	1						1			
Malicious Injury to Animal	1			1							
Malicious Injury to Property	1	1								1	
Malicious Setting Fire to Woods	1			1							
Manslaughter	10	9		1			9				
Murder	10	8	1	1			8				
Petit Larceny	26	17	1	5	3			9	7	5	
Possession of Still	6	4	1	1			4				
Presenting Firearms	1	1							1		
Public Drunkenness	11	5		6				1	2	2	
Reckless Driving	12	6		6				1		5	

CIRCUIT COURT OF ESCAMBIA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Selling Mortgaged Property	2	1			1		1				
Temporary Use of Automobile	4	3		1				1		2	
Trespass after Warning	5	2	1	2						2	
Vagrancy	1			1							
Violating Game and Fish Law	8		2	6							
Violating Highway Law	1			1							
Violating Motor Vehicle Law	3			3							
Violating P. L.	14	6	4	4				3		3	
Violating Revenue Law	2			2							
Violating Uniform Firearms Act	4	2	1	1				1		1	
TOTALS	316	188	16	99	13		98	29	13	54	

CIRCUIT COURT OF ETOWAH COUNTY

Abusive Language	15	3	12							3	

Adultery	3	1		1	1			1			
Affray	1				1						
Arson	6	2	1	3			1	1			
Assault and Battery	36	13	6	17			3	7		3	
Assault with Intent to Murder	65	13	10	41	1		13				
Assault with Intent to Rob	4	4					4				
Assault to Ravish	3	1	2					1			
Bastardy	17	7	1	9			3			4	
Bigamy	3	2		1			2				
Breach of Peace	1			1							
Bribery	1			1							
Burglary	140	100	7	31	2		98	2			
Carnal Knowledge	20	6	1	13			6				
Carrying Concealed Weapon	2	1	1					1			
Concealing Felon	1		1								
Conspiracy	1			1							
Crime Against Nature	1	1					1				
Decoying Away Child	1			1							
Distilling	16	7		9			7				
Driving While Intoxicated	16	5	2	8	1			1		4	
Doing Business Without License	1			1							
Embezzlement	10	1	2	7					1		
False Pretense	15	3	4	8			3				
Forgery	47	30	1	16			29	1			
Gambling Device	77	9	5	60	3			1	8		
Gaming	11			11							
Giving Worthless Check	3	2		1					1	1	
Grand Larceny and Rec. St. Prop.	80	39	11	27	3		38	1			
Hunting Without License	3			3							
Improper Tag	1			1							
Incest	1	1					1				
Indecent Exposure	1	1								1	

CIRCUIT COURT OF ETOWAH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Leaving Scene of Accident	1			1							
Malicious Injury to Animal	2	1	1							1	
Malicious Injury to Fire Alarm	1		1								
Manslaughter	18	15	2	1			14	1			
Murder	16	10	4	2			10				
Non-Support	2	1		1						1	
Operating Dance Hall Without License	2	1		1			1				
Operating House of Prostitution	2	1		1						1	
Peace Proceeding	3			3							
Perjury	2			2							
Petit Larceny	18	6	2	10				4		2	
Public Drunkenness	17	11	2	3	1		1	2		8	
Rape	7	3	1	3			3				
Reckless Driving	17	6	3	8				3		3	
Resisting an Officer	2	1		1				1			
Seduction	6	1		5			1				
Selling Liquor on Election Day	1	1						1			
Selling Mortgaged Property	5	1		4				1			
Shooting Dwelling House	1			1							
Throwing Stink Bomb	1			1							

Trespass	10	1	1	8				1			
Unlawfully Presenting Firearms	1	1						1			
Unlawfully Selling Milk Bottles	1			1							
Vagrancy	4	2		2			1	1			
Violating Game Law	3	2	1					2			
Violating Highway Law	2			2							
Violating Narcotic Law	1	1					1				
Violating Prohibition Law	129	69	8	51	1		49	11		9	
Violating Stock Law	1			1							
TOTALS	879	387	93	385	14		290	46	10	41	

CIRCUIT COURT OF FAYETTE COUNTY

Abusive Language	4	1		3						1	
Assault and Battery	12	11			1			4		7	
Assault to Murder	8	4		3	1		3	1			
Attempt to Commit Felony	4	4					1	1		2	
Bastardy	2		1		1						
Bigamy	1	1					1				
Burglary	2	2					2				
Buying, Rec., Concealing Stolen Property	1	1						1			
Disturbing Assembly	2			2							
Driving While Intoxicated	3	2			1					2	
Embezzlement	1			1							
False Pretense	5	5					4		1		
Forgery	3	2		1				2			
Gaming	5		1	4							

CIRCUIT COURT OF FAYETTE COUNTY—(Continued)

JUDICIAL CIRCUITS	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Grand Larceny	16	8	2	6			8				
Malicious Injury to Property	2	2								2	
Manslaughter	3	3					1	2			
Manufacturing Liquors	11	8	2		1		8				
Murder	4	4					4				
Petit Larceny	8	6	1	1				4		4	
Presenting Firearms	1	1								1	
Public Drunkenness	5	4		1						4	
Reckless Driving	7	4	2	1				1		4	
Robbery	5	2	1	2			2				
Seduction	1			1							
Transporting Liquor	2	1		1			1				
Violating Game Law	2		1	1							
Violating Prohibition Law	18	12	2	4				8		5	
Violating Rabies Law	2	2								2	
Violating Uniform Firearms Law	2	2						1		1	
TOTALS	142	92	13	32	5		35	25	1	35	

CIRCUIT COURT OF FRANKLIN COUNTY*

Burglary	1	1					1				
Forgery	1	1					1				
Grand Larceny	1	1					1				
Leaving Scene of Accident	1	1						1			
Manufacturing Liquor	4	4					4				
TOTALS	8	8					7	1			

*Incomplete.

CIRCUIT COURT OF GENEVA COUNTY

Abusive Language	3	1		2						1	
Arson	1			1							
Assault and Battery	19	4	4	11				4			
Assault to Murder	3	2		1			2				
Assault to Rape	1	1					1				
Bastardy	1			1							
Burglary	7	6		1			6				
Carnal Knowledge	2			2							
Contempt	3	3								3	
Driving While Intoxicated	7	6		1				1		5	
Embezzlement	4	2		2			2				
False Pretense	5	1	1	3			1				
Forgery	1			1							

CIRCUIT COURT OF GENEVA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Fraudulent Check	6	2	2	2				1		1	
Grand Larceny	19	9	1	8	1		9				
Kidnapping	1			1							
Manslaughter											
Murder	4	2			2		2				
Obstructing Public Road	1		1								
Petit Larceny	7	6		1				5		1	
Presenting Firearms											
Public Drunkenness	2	2						2			
Reckless Driving	2	2								2	
Robbery	2	2				1	1				
Selling Mortgaged Property	8	4		4			2			2	
Trespass	1		1								
Vagrancy	1			1							
Violating A. B. C. Act	4	2	1	1						2	
Violating Highway Law	5	1	1	3						1	
Violating P. L.	21	10	1	8	2		2	5		3	
Violating Revenue Law	1	1								1	
TOTALS	142	69	13	55	5	1	28	18		22	

CIRCUIT COURT OF GREENE COUNTY

Abusive Language	2	1		1				1			
Arson	1	1					1				
Assault and Battery	10	10						1		9	
Assault to Murder	39	29	1	9			29				
Assault with Weapon	46	42		4				11		31	
Attempt to Bribe	1			1							
Attempt to Distill	36	34		2						34	
Burglary	13	12		1			12				
Buying, receiving, concealing stolen property	2	1		1			1				
Carrying Concealed Weapon	30	23	1	4	2			6		17	
Distilling	41	28		11	2		18			10	
Disturbing a Woman	2	1		1						1	
Disturbing Public Worship	2			2							
Driving while Intoxicated	3	3						1		2	
Escape	6	4	1	1				3		1	
False Pretense	2	1		1				1			
Forgery	3	2			1		2				
Fraudulent Check	1			1							
Grand Larceny	32	29	1	2			25				4
Leaving Scene of Accident	1	1					1				
Malicious Injury to Property	1			1							
Manslaughter	4	3		1			3				
Murder	13	13					13				
Petit Larceny	7	6		1				5		1	
Presenting Firearms	4	3		1				1		2	
Public Drunkenness	1	1								1	
Rape	3	3					3				
Reckless Driving	1	1								1	
Robbery	1			1							

CIRCUIT COURT OF GREENE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Selling Mortgaged Property	3	2		1				2			
Trespass	4	4							1	3	
Violating Game and Fish Law	1			1							
Violating P. L.	46	40		6				4		36	
Violating Revenue Law	1			1							
Violating Stock Law	2	2								2	
TOTALS	365	300	4	56	5		108	36	1	151	4

CIRCUIT COURT OF HALE COUNTY

Abusive Language	4	3			1			2	1		
Assault and Battery	6	6						2		4	
Assault to Murder	10	6	1	3			6				
Assault to Rape	1	1					1				
Assault to Rob	1	1					1				

Assault with a Weapon	19	16	1	2				14	1	1	
Burglary	14	13		1			13				
Carrying Concealed Weapon	4	2	2					2			
Disturbing Public Worship	1	1								1	
Distilling	75	70	3	2			70				
Driving while Intoxicated	1	1						1			
Forgery	5	5					5				
Grand Larceny	23	17		6			17				
Issuing Worthless Check	3	3						3			
Manslaughter	7	7					6	1			
Murder	5	4	1			2	2				
Obtaining money by false pretense	1	1					1				
Petit Larceny	11	8		3				6		2	
Public Drunkenness	5	4	1					1		3	
Rape	2	2				1	1				
Reckless Driving	4	4						3		1	
Robbery	1	1					1				
Sodomy	1	1					1				
Trespass	3	3						1		2	
Using Car without Owner's Consent	1	1							1		
Vagrancy	1			1							
Violating Game and Fish Law	1			1							
Violating Highway Law	2	1		1						1	
Violating Prohibition Law	24	18		5	1			14	2	2	
Violating Revenue Law	3	3							1	2	
TOTALS	239	203	9	25	2	3	125	50	6	19	

CIRCUIT COURT OF HENRY COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Abortion	1	1					1				
Abusive Language	3	2		1						2	
Adultery	1			1							
Arson	3	2	1				2				
Assault and Battery	12	10	1	1				6		4	
Assault to Murder	10	6		1	3		6				
Assault to Rape	1	1					1				
Bastardy	1			1							
Breach of Peace	1	1						1			
Burglary	11	8	1	2			8				1
Buying, receiving, concealing stolen property	2	2					1			1	
Carnal Knowledge	2	1	1				1				
Carrying Concealed Weapon	2	2						2			
Distilling	13	13					13				
Driving while Intoxicated	2	2								2	
Escape	3			2	1						
False Pretense	2			1	1						
Forgery	6	3		3			3				
Grand Larceny	17	9	3	5			9				
Leaving Scene of Accident	1			1							

Manslaughter	6	4	1	1			3	1			1
Murder	10	7	3				7				
Operating Gambling Device	1	1								1	
Petit Larceny	6	5		1			2	3			
Public Drunkenness	3	1		1	1					1	
Rape	1		1								
Reckless Driving	3	1		2				1			
Robbery	1	1					1				
Selling Mortgaged Property	1		1								
Trespass	2		1		1						
Taking girl under 14 for marriage	1		1								
Violating Game and Fish Law	2		1	1							
Violating Narcotics Law	3			2	1						
Violating Prohibition Law	10	7	3					4		3	
TOTALS	144	90	19	27	8		58	18		14	2

CIRCUIT COURT OF HOUSTON COUNTY

Abortion	4		2	1	1						
Abusive Language	5	2	1	2				1		1	
Adultery	2	2						2			1
Affray	1		1								
Altering Brands	1			1							
Arson	5	1		2	2		1				
Assault and Battery	54	42	4	8			1	21		20	1
Assault to Murder	39	18	4	17			17	1			2
Assault to Rape	2			2							

CIRCUIT COURT OF HOUSTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Assault to Rob	2	1		1			1				
Attempt to Commit a Felony	1	1					1				
Bastardy	5	1	2	2				1			
Bigamy	5	5					5				
Breach of Peace	2			2							
Burglary	48	37	4	5	2		37				
Buying, receiving, concealing stolen property	6	2	1	3				1	1		
Carnal Knowledge	4	1	1	1	1		1				
Carrying Concealed Weapon	6	5		1				3		2	
Distilling	6	6					6				
Driving while Intoxicated	14	10	1	3				2	1	7	
Embezzlement	4	3	1				2			1	
False Pretense	14	7	3	3	1		3	2		2	
Forgery	16	6	2	8			6				1
Gaming	2			2							
Grand Larceny	62	43	1	16	2		42	1			3
Issuing Worthless Check	3	1		1	1			1			
Leaving Scene of Accident	6	1	2	2	1			1			
Malicious Injury to Animal	2		2								
Malicious Injury to Property	1		1								

Manslaughter	13	11	2				10		1		
Murder	21	13	5	3			13				
Operating Gaming Device	7	7					1			6	1
Perjury	7	6	1				6				2
Petit Larceny	20	11		9				9		2	
Possessing Still	3	2		1			2				
Presenting Firearms	1	1								1	
Public Drunkenness	6	1	2	3				1			
Rape	1		1								
Reckless Driving	8	5	1	2				1		4	
Robbery	12	5	2	5			5				
Selling Mortgaged Property	5	3	1		1		3				
Shooting into Dwelling	1			1							
Sodomy	2	2					2				
Transporting Whiskey	5	5					5				
Trespass	3	1	1	1							
Using car without consent	2	1	1					1			
Vagrancy	20	2	5	13				2			
Violating A. B. C. Act	2		1	1							
Violating Game and Fish Law	25	2	4	17	2					2	
Violating Highway Law	2				2						
Violating Prohibition Law	46	22	2	22				14		10	2
Violating Revenue Law	3	2			1					2	
Violating Sunday Law	1		1								
TOTALS	538	297	63	161	17		170	66	3	60	13

CIRCUIT COURT OF JACKSON COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Abusive Language	1	1						1			
Adultery	1			1							
Aiding Convict to Escape	1			1							
Arson	1	1					1				
Assault	5	2		3						2	
Assault and Battery	7	6		1				2		4	
Assault to Murder	3	1	1	1			1				
Assault to Rob	4	2		2			2				
Assault with Weapon	3	1		2				1			
Bastardy	7	3		4			1	1		1	
Breach of Peace	2				2						
Burglary	16	6		10			6				
Carnal Knowledge	3			3							
Carrying Concealed Weapon	1			1							
Contempt of Court	1			1							
Defacing Public Building	1			1							
Distilling	19	10		7	2		8	1		1	
Disturbing Public Worship	3	2		1						2	
Driving while Intoxicated	19	12	1	5	1			2	8	2	
Failing to stop after accident	1			1							

False Pretense	8			8							
Forgery	11	4		7			3	1			
Grand Larceny	20	8	1	11			8				
Incest	1			1							
Manslaughter	11	8	1	2			4	3		1	
Murder	12	7	2	1	2		7				
Operating Gambling Machine	8			3	5						
Petit Larceny	13	3		10					2	1	
Presenting Firearms	1			1							
Public Drunkenness	6	2	1	3						2	
Rape	1	1					1				
Reckless Driving	6	2		4							
Robbery	1	1					1				
Seduction	2			2							
Selling Mortgaged Property	3			3							
Transporting Liquor	13	9	1	3			9				
Trespass	5	2		3			2				
Violating Game and Fish Law	1				1						
Violating P. L.	62	19	2	40	1			12	2	7	
TOTALS	284	113	10	147	14		55	24	12	25	

CIRCUIT COURT OF JEFFERSON COUNTY

(See Tenth Judicial Circuit)

CIRCUIT COURT OF LAMAR COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Abusive Language	3	2		1						2	
Adultery	4	2		2			1	1			
Assault and Battery	9	7	1	1						7	
Bastardy	1			1							
Bigamy	3	3					3				
Burglary	2	1		1			1				
Defacing Jail	1	1							1		
Distilling	26	23	1	2			23				
Forgery	1	1					1				
False Pretense	4	4						4			
Grand Larceny	9	5	1	2	1		5				
Manslaughter	4	4					4				
Murder	6	3		3			3				
Perjury	2	2					2				
Petit Larceny	14	11	3					4	2	5	
Possessing Still	1	1					1				
Public Drunkenness	10	7		3						7	
Reckless Driving	3	2		1				1		1	
Selling Mortgaged Property	2	2					2				
Transporting Liquor	2	2					1	1			

Unlawfully Leaving Scene of Accident	1			1							
Unlawfully Presenting Firearms	2			2							
Vagrancy	1	1						1			
Violating P. L.	36	24	3	9				19	3	2	
TOTALS	147	108	9	29	1		47	31	6	24	

CIRCUIT COURT OF LAUDERDALE COUNTY *

Assault with Intent to Murder	7	4	1	2			2	2			
Bastardy	1		1								
Burglary	7	7					7				
Defaulting Witness	2				2						
Forgery	13	7			6		7				
Grand Larceny	35	29	3	3			27	2			
Leaving Scene of Accident	1	1								1	
Manslaughter	1	1					1				
Manufacturing Liquor	12	8		4			8				
Murder	7	6		1			6				
Robbery	1	1					1				
TOTALS	87	64	5	10	8		59		4	1	

* Incomplete

CIRCUIT COURT OF LAWRENCE COUNTY*

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Abandonment	1			1							
Abusive Language	1			1							
Assault and Battery	3	3						1		2	
Assault to Murder	11	3	2	6			2			1	
Assault to Rob	1			1							
Attempt to Distill	5	5								5	
Bastardy	6		1	4	1						
Bigamy	1	1					1				
Burglary	5	4		1			4				
Disposing of Mortgaged Property	2			2							
Embezzlement	1			1							
Forgery	1	1					1				
Grand Larceny	11	7	1	3			7				
Manslaughter	1				1						
Manufacturing Liquors	41	28	5	8			27				1
Murder	11	4	4	3			4				
Peace Proceedings	1			1							
Perjury	2			2							
Rape	1	1					1				
Seduction	2	1		1			1				

Transporting Liquor	5	3		1	1		2			1	
Violating Election Laws	1				1						
TOTALS	114	61	13	36	4		50	1		9	1

* Incomplete

CIRCUIT COURT OF LEE COUNTY

Adultery	4			4							
Arson	10	8	1	1			8				
Assault and Battery	9	7		2				2		5	
Assault with Intent to Murder	38	19	7	12			19				
Assault with Weapon	2	2						2			
Bastardy	1			1							
Bigamy	1	1					1				
Burglary	78	63	5	10			63				
Buying, Receiving, Concealing Stolen Property	4	3		1			3				
Carnal Knowledge	1		1								
Carrying Concealed Weapon	4	1		3						1	
Distilling	124	99	8	17			99				
Disturbing Peace	3			3							
Driving While Intoxicated	3	3						1		2	
Embezzlement	1	1					1				
Forgery	10	8	2				8				
Grand Larceny	58	38	5	15			38				
Manslaughter	14	11	3				11				
Murder, 1st Degree	3		3								

CIRCUIT COURT OF LEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Murder, 2nd Degree	18	11	5	2			11				
Petit Larceny	12	9	2	1				7		2	
Public Drunkenness	1			1							
Rape	2	1	1				1				
Reckless Driving	5	4		1						4	
Robbery	14	10	1	3			10				
Seduction	1		1								
Trespass	2	2								2	
Violating Prohibition Law	18	8		10			3			5	
Violating Game Law	1		1								
Violating Highway Law	2			2							
Violating Revenue Law	2	1	1					1			
TOTALS	446	310	47	89			276	13		21	

CIRCUIT COURT OF LIMESTONE COUNTY *

Abusive Language	4	1	1	2			1				
Arson	2	2					2				
Assault and Battery	1			1							
Assault to Murder	2		2								
Assault with Weapon	4	2		2						2	
Attempt to Forge	1	1							1		
Burglary	13	7	1		5		7				
Carnal Knowledge	2	1		1			1				
Destroying Landlord's Lien	1			1							
Driving While Intoxicated	9	7		2				1	2	4	
Embezzlement	1			1							
False Acknowledgment of Deeds	1			1							
Forgery	13	2	1	5	5		2				
Grand Larceny	40	20	16	3	1		20				
Malicious Injury to Property	1	1								1	
Manslaughter	4	2	2				2				
Manufacturing Liquors	14	12	1	1			12				
Murder	5	3	2				3				
Petit Larceny	1		1								
Public Drunkenness	1			1							
Receiving Stolen Property	1			1							
Reckless Driving	8	8								8	
Uncoupling Railroad Train	2	2								2	
Violating Game and Fish Law	5	1	2	2						1	
Violating Highway Law	1	1								1	
Violating Prohibition Law	35	17	2	14	2			5	3	9	

CIRCUIT COURT OF LIMESTONE COUNTY *—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Violating Revenue Law	2	1		1						1	
TOTALS	174	91	31	39	13		50	6	6	29	

* Incomplete

CIRCUIT COURT OF LOWNDES COUNTY

Assault and Battery	4	3			1		1	1		1	
Assault to Murder	12	7	2	3			6	1			
Attempt to Burglarize	2	2						2			
Bastardy	1			1							
Burglary	18	15	1	2			15				
Carnal Knowledge	2	2					2				
Carrying Concealed Weapon	1	1						1			
Distilling	6	5		1			5				

Driving While Intoxicated	4	2		2				1		1	
Grand Larceny	30	16	3	9	2		16				
Manslaughter	2	2					2				
Murder	12	10		2			10				
Petit Larceny	8	5		3				5			
Public Drunkenness	1	1								1	
Robbery	5	4	1				4				
V. P. L.	6	5		1				1		4	
TOTALS	114	80	7	24	3		61	12		7	

CIRCUIT COURT OF MACON COUNTY

Arson	1	1					1				
Assault and Battery	6	4	2						2	2	
Assault with Intent to Murder	11	8	2	1			8				
Assault with Intent to Rape	1		1								
Assault with Weapon	2	2					1	1			
Burglary	18	15		2			15				1
Distilling	31	24	3	4			24				
Driving while Intoxicated	3	3							2	1	
Embezzlement	3	2		1			2				
Escape	3	3						3			
Forgery	1	1					1				
Grand Larceny	48	31	6	11			31				
Manslaughter	2	2					2				
Murder, 1st Degree	2	1	1				1				
Murder, 2nd Degree	2	2					2				

CIRCUIT COURT OF MACON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Petit Larceny	3	3						3			
Presenting Firearms	2	2							1	1	
Public Drunkenness	1	1						1			
Robbery	1	1					1				
Trespass	2	2								2	
Violating Prohibition Law	11	10	1				2	1		7	
TOTALS	154	118	16	19			89	9	5	15	1

CIRCUIT COURT OF MADISON COUNTY

(See Twenty-third Judicial Circuit)

CIRCUIT COURT OF MARENGO COUNTY

Abusive Language	1	1								1	
Arson	4	2	1	1			2				
Assault and Battery	17	14		3			4	3		7	
Assault to Murder	22	14		7	1		9			5	
Attempt to Manufacture Whiskey	151	145		5	1					145	
Attempt to Rob	3	3					3				
Bastardy	1		1								
Burglary	28	23		5			23				
Carrying Concealed Weapon	19	14		5				6		8	
Disposing of Mortgaged Property	1	1					1				
Distilling	66	64	1		1		64				
Embezzlement	1			1							
False Pretense	2			2							
Forgery	2	2						2			
Fraudulently Bringing Property into Alabama	1	1					1				
Grand Larceny	45	31		14			22	2		7	
Issuing Bad Check	1	1								1	
Letting Stock Run at Large	1		1								
Malicious Injury to Animal	1			1							
Manslaughter	5	5					2	2	1		
Murder	12	11	1			1	10				
Petit Larceny	9	9						2		7	
Presenting Firearms	1		1								
Rape	1	1					1				
Receiving Stolen Property of Mortgage	9	8		1			8				
Reckless Driving	3	2		1						2	
Robbery	2			2							
Trespass	1	1								1	
Violating Ordinance	16			16							

CIRCUIT COURT OF MARENGO COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Violating Prohibition Law	36	29		5	2			5		24	
TOTALS	462	382	6	69	5	1	150	22	1	208	

CIRCUIT COURT OF MARION COUNTY

Abusive Language	12	5		7				2	1	2	
Adultery	1			1							
Arson	2		1	1							
Assault and Battery	30	19	2	9				7	1	11	
Assault to Murder	5	1	1	3			1				
Assault with Weapon	2	1	1					1			
Attempt to Distill	3	3								3	
Bastardy	4	3		1				3			
Bribery of Witness	1		1								
Burning Woods	4	4								4	

Burglary	7	6	1				6				
Buying, receiving, concealing stolen property	1	1								1	
Carnal Knowledge	2		1	1							
Carrying Concealed Weapon	2			2							
Contempt of Court	1	1								1	
Defacing Jail	1	1						1			
Distilling	11	5	1	5		5					
Driving while Intoxicated	9	2		7				1		1	
Embezzlement	1			1							
False Pretense	1				1						
Fraudulent Check	1	1						1			
Grand Larceny	6	2	1	3			2				
Incest	2	2					2				
Keeping Gaming Table	1			1							
Kidnapping	1			1							
Leaving Scene of Accident	1			1							
Malicious Injury	1	1								1	
Malicious Injury to Animal	1			1							
Malicious Injury to property	2			2							
Manslaughter	1			1							
Murder	4	4					4				
Nonsupport	3			3							
Peace Proceeding	1			1							
Permitting Minor to Play Pool	2	1		1						1	
Petit Larceny	4	2	1	1			2				
Possessing Still	5	5					5				
Public Drunkenness	17	9		8						9	
Reckless Driving	15	5	2	8						5	
Removing gravestone	1			1							
Resisting officer	2			2							
Robbery	2	2					2				
Seduction	1			1							

CIRCUIT COURT OF MARION COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Selling Mortgaged Property	1			1							
Transporting Liquor	1			1							
Trespass	1	1								1	
Unlawful interference with work	1			1							
Vagrancy	1			1							
Violating Election Laws	4			4							
Violating Game and Fish Law	1	1								1	
Violating Highway Law	2	2								2	
Violating P. L.	71	44	3	24				11	10	23	
Violating Revenue Law	1			1							
Violating Stock Law	2			2							
TOTALS	260	134	16	109	1		29	27	12	66	

Abusive Lanugaue	4	2		2			2				
Adultery	2			2							
Arson	4	1		3			1				
Assault and Battery	11	3		7	1		2			1	
Assault to Murder	14	4		9	1		4				
Assault to Ravish	1			1							
Assault to Rob	1			1							
Assault with Weapon	1	1								1	
Attempt to Kidnap	1			1							
Bastardy	4	1		2	1					1	
Burglary	32	16		16			16				
Buying, receiving, concealing stolen property	1	1					1				
Carnal Knowledge	2	1		1			1				
Desertion	1			1							
Distilling	79	49		30			49				
Driving while Intoxicated	15	2		12	1				1	1	
Embezzlement	2		1	1							
False Pretense	5			4	1						
Forgery	13	7	1	5			7				
Fraudulent Check	2			2							
Grand Larceny	40	22		16	2		22				
Keeping open store	1			1							
Leaving Scene of Accident	1			1							
Malicious Injury to Animal	1	1								1	
Manslaughter	3			2	1						
Mayhem	1	1					1				
Murder	6	2	2	1	1		2				
Operating Gambling Device	1			1							
Peace Proceeding	2			2							

CIRCUIT COURT OF MARSHALL COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Petit Larceny	11	5	2	4			2	1	2		
Public Drunkenness	10	1		9						1	
Reckless Driving	6	1		5				1			
Resisting Officer	2			2							
Robbery	3		1	2							
Seduction	3			3							
Selling Mortgaged Property	3	1		2			1				
Shooting into Dwelling	2			2							
Transporting Liquor	7	5		2			5				
Vagrancy	1			1							
Violating Game and Fish Law	2			2							
Violating Highway Law	3	1		2						1	
Violating Motor Vehicle Law	1			1							
Violating P. L.	38	19	1	18			3	5		11	
Violating Rabies Law	1			1							
Violating Revenue Law	2			2							
TOTALS	346	147	8	182	9		119	7	3	18	

CIRCUIT COURT OF MOBILE COUNTY

(See Thirteenth Circuit)

CIRCUIT COURT OF MONROE COUNTY

Abusive Language	6	2		4				1		1	
Adultery	1	1								1	
Arson	2	1	1				1				
Assault and Battery	2			2							
Assault to Murder	6	3		1	2		3				
Assault to Rape	1	1					1				
Assault with Weapon	29	18		10	1			5		13	
Bastardy	2		1		1						
Burglary	16	11		5			11				
Buying, receiving, concealing stolen property	1		1								
Buying seed cotton at night	1			1							
Carrying Concealed Weapon	2			2							
Decoying Away Child	1			1							
Distilling	12	10			2		10				
Driving While Intoxicated	5	1	1	3						1	
Failure to Inoculate Dog	2			2							
False Pretense	4		2	1	1						
Forgery	2	2					2				
Fraudulent Check	1	1						1			
Grand Larceny	22	14		5	3		14				
Leaving Scene of Accident	1	1								1	
Malicious Injury to Animal	1	1								1	

CIRCUIT COURT OF MONROE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Malicious Injury to Property	2	1		1						1	
Manslaughter	4	2	1	1			2				
Murder	6	5	1				5				
Nonsupport	1	1								1	
Obtaining Board by Fraud	1			1							
Operating Cambling Device	3	2	1							2	
Petit Larceny	6	4		2				3		1	
Possession of Still	4	3	1				3				
Practicing Dentistry without Certificate	2				2						
Public Drunkenness	13	5		8				2		3	
Reckless Driving	2	2								2	
Shooting into Dwelling	1	1						1			
Temporary Use of Automobile	1	1						1			
Vagrancy	1			1							
Violating Drivers' License Law	2			2							
Violating Game and Fish Law	7	2	1	4						2	
Violating Highway Law	6			6							
Violating P. L.	28	15	4	8	1			7		8	
Violating Revenue Law	5	1		4				1			
Violating Stock Law	1			1							

Violating Sunday Law	4	4						1		3	
Violating Uniform Firearms Act	1	1						1			
TOTALS	221	117	15	76	13		52	24		41	

CIRCUIT COURT OF MONTGOMERY COUNTY

(See Fifteenth Circuit)

CIRCUIT COURT OF MORGAN COUNTY*

Assault and Battery	3	3						2	1		
Assault to Murder	18	13	3	2			13				
Bastardy	3	2	1					1		1	
Bigamy	1			1							
Burglary	55	47	1	6	1	1	47				
Carnal Knowledge	6	2	1	3			2				
Disposing of mortgaged property	1			1							
Embezzlement	1		1								
False Pretense	3	1	1	1			1				
Forgery	7	6		1			5	1			
Grand Larceny	34	19	3	11	1		19				
Manufacturing Liquors	21	16	1	4			16				
Murder	17	13	4				13				
Non-Support	1				1						
Perjury	1			1							

CIRCUIT COURT OF MORGAN COUNTY*—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Petit Larceny	1	1						1			
Rape	2		1				1				
Seduction	2			2							
Transporting Liquor	7	4		3			4				
Violating Revenue Law	1			1							
TOTALS	184	127	17	37	3	1	120	5	1	1	

*Incomplete

CIRCUIT COURT OF PERRY COUNTY

Abusive Language	1			1							
Arson	1	1					1				
Assault & Battery	4	4						3		1	
Assault to Murder	19	11	2	5	1		10	1			

Assault to Rob	4	4					4				
Assault with a Weapon	16	15		1				10		5	
Attempt to Commit a Felony	3	3					1		1	1	
Burglary	35	27		8			27				
Buying, Receiving, Concealing Stolen Property	6	6					3	2		1	
Carrying Concealed Weapon	6	4		2				2		2	
Distilling	62	59	1	2			59				
Driving While Intoxicated	2		1	1							
False Pretense	2			2							
Forgery	2	2					2				
Grand Larceny	43	34	5	4			34				
Malicious Mischief	1	1						1			
Manslaughter	5	3	1	1			3				
Murder	6	4		2			4				
Non-support	1	1						1			
Operating Slot Machine	5	4		1						4	
Petit Larceny	12	10		2				8		2	
Presenting Firearms	1			1							
Public Drunkenness	5	5								5	
Rape	2	1		1			1				
Reckless Driving	2	2						1		1	
Resisting Officer	2	2								2	
Trespass	6	3		3				1		2	
Using Car Without Owner's Consent	2	2						1		1	
Viol. Highway Law	1		1								
Viol. Prohibition Law	11	9		2			2	5		2	
Viol. Revenue Law	2	2								2	
TOTALS	270	219	11	39	1		151	36	1	31	

CIRCUIT COURT OF PICKENS COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Abusive Language	1			1							
Adultery	1	1						1		1	
Aiding Escape	1	1						1			
Assault and Battery	26	21	1	4				8		17	1
Assault to Murder	12	7		5			7				1
Assault to Ravish	1			1							
Attempt to Commit a Felony	17	16		1						16	2
Burglary	7	7					7				
Cruelty to Animals	1	1								1	
Disturbing Religious Worship	3			3							
Driving While Intoxicated	3	2		1				1		1	
Embezzlement	1		1								
False Pretense	5			1	4						
Forgery	4	3		1			2	1			
Grand Larceny	8	8					8				
Issuing Bad Check	1			1							
Malicious Mischief	1		1								
Manslaughter	9	6		3			3	2		1	
Manufacturing Liquors	22	17	1	2	2		17				
Murder	11	3	5	3			3				

Operating Gaming Device	7	6		1						6	
Operating Slot Machines	3			3							
Perjury	1		1								
Petit Larceny	4	3		1				2	1		
Public Drunkenness	8	6	1	1				1		6	1
Rape	2		2								
Receiving stolen Property	1	1					1				1
Reckless Driving	3	3								3	
Robbery	1			1							
Shooting into House	2	2								1	1
Transporting Liquor	2	1		1			1				
Trespass	2			2							
Unlawfully Removing Fence	1	1								1	
Violating Prohibition Law	50	34	3	13				20		34	13
Violating Stock Law	1			1							
Violating Uniform Firearms Act	5	3	1	1						3	
TOTALS	228	153	17	52	6		47	37	1	91	20

CIRCUIT COURT OF PIKE COUNTY

Assault & Battery	9	8	1					7		1	
Assault to Murder	15	14	1				14				
Assault to Rape	1	1					1				
Assault to Rob	5	5					5				
Accessory after the Fact	2	1			1			1			
Bigamy	1		1								
Burglary	27	19		8			19				

CIRCUIT COURT OF PIKE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Buying, Rec., Concealing Stolen Property	3	2			1		1	1			
Carnal Knowledge	1		1								
Distilling	16	16					16				
D. W. I.	7	6		1				4		2	
False Entry in Bank Legder	3	2		1			2				
Forgery	1	1					1				
Grand Larceny	39	27	2	10			27				
Manslaughter	6	4		2			4				
Murder	13	9	4				9				
Obtaining Signature by Fraud	2		2								
Operating Gambling Device	1			1							
Petit Larceny	2	2						2			
Presenting Firearms	1	1								1	
Public Drunkenness	1	1								1	
Rape	3	2	1				2				
Robbery	4	4					4				
Transporting Whiskey	10	8		2			8				
Using Car Without Owner's Consent	1	1						1			
Violating Game & Fish Law	2			2							
Violating Prohibition Law	7	6	1					3		3	

Violating Uniform Firearms Act	1			1							
TOTALS	184	140	14	28	2		113	19		8	

CIRCUIT COURT OF RANDOLPH COUNTY

Arson	4	2		2			2				
Assault with Intent to Murder	4	1	2				1				
Assault with Intent to Rape											
Assault with Weapon	9	9						6		3	
Bastardy	2				2						
Bigamy											
Burglary	22	18		4			18				
Buying, Receiving, Concealing Stolen Property	5	2	1	2				2			
Carnal Knowledge	1	1					1				
Disposing of Mortgaged Property	3	1	1	1			1				
Distilling	54	49	3	2			49				
Disturbing Peace	1	1						1			
Driving While Intoxicated	3	2		1				1		1	
Escape	3	2	1					2			
False Pretense	2	1		1			1				
Forgery	1			1							
Grand Larceny	33	19	5	7	1		19				
Manslaughter	5	4	1				4				
Murder 1st Degree	4	3		1			3				
Murder 2nd Degree	2	2					2				
Petit Larceny	3			3							
Public Drunkness	1			1							

CIRCUIT COURT OF RANDOLPH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Rape	1	1				1					
Robbery	1	1					1				
Seduction	1		1								
Trespass	1			1							
Violating Prohibition Law	17	5	5	7			1	2		2	
Violating Highway Law	1		1								
TOTALS	184	124	21	35	4	1	103	14		6	

CIRCUIT COURT OF RUSSELL COUNTY

Abandonment	2	1		1						1	
Abusive Language	2	1		1						1	
Adultery	2			2							
Affray	2	2						1		1	
Arson	1	1					1				

Assault and Battery	42	32	4	6			7	4		22	
Assault to Murder	34	20	9	5			17	3			
Assault to Rape	4	2	2				2				
Assault with Weapon	16	12	2	2				5		7	
Bastardy	4	1		2	1					1	
Betting at Cards	4	2	1	1						2	
Bigamy	2	1		1				1			
Burglary	41	27	4	10			26	1			
Buying, receiving, concealing stolen property	4	1		3						1	
Carnal Knowledge	3	1		2			1				
Carrying Concealed Weapon	3	1	1	1						1	
Contempt	1	1								1	
Distilling	42	30	5	7			30				
Disturbing Public Worship	2	2								2	
Driving While Intoxicated	12	7	3	1	1					7	
Embezzlement	11	3	4	4			1			2	
Enticing Away Servant	1		1								
Escape	2	2						2			
False Pretense	6	2	1	3			1			1	
Forgery and attempt at Forgery	6	3		3			2			1	
Fraudulent Check	2	1		1				1			
Grand Larceny	52	35	9	8			33	2			
Keeping Gambling Machine	21	15	2	4						15	
Leaving Scene of Accident	3	3						1		2	
Malicious Injury to Animal	2	1	1							1	
Manslaughter	14	10	2	2			6	3		3	
Mayhem	2		1	1							
Misdemeanor	1	1								1	
Murder	21	12	7	2			12				
Nonsupport	3	1		2						1	
Perjury	4	2		2						2	
Petit Larceny	12	6	3	3				2		4	

CIRCUIT COURT OF RUSSELL COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Poisoning	1			1							
Presenting Firearms	1		1								
Public Drunkenness	5	2		3						2	
Rape	4	1	1	1			1				
Reckless Driving	4	1	1	1	1					1	
Robbery	22	9	6	7			9				
Selling Mortgaged Property	6	2	2	2						2	
Shooting along Road	1		1								
Shooting into Dwelling House	2	2								2	
Sodomy	1	1								1	
Transporting Liquor	2	2					2				
Trespass	2	1		1						1	
Using Car without Owner's Consent	1	1								1	
Vagrancy	14	6	1	7				2		4	
Violating ABC Act	10	6	1	3						6	
Violating Game Law	2		1	1							
Violating Highway Law	1	1								1	
Violating P. L.	20	12	3	5				2		10	

Violating Revenue Law	5	2	2	1						2	
TOTALS	490	291	82	114	3		151	30		111	

CIRCUIT COURT OF ST. CLAIR COUNTY

Abusive Language	4			4							
Adultery	1			1							
Arson	4	1		3			1				
Assault and Battery	12	6	1	3	2			1		5	
Assault and Battery with Weapon	1				1						
Assault with Intent to Murder	9	3		4	2		1			2	
Assault with Intent to Rob	4				4						
Assault to Ravish	2				2						
Assault with Weapon	3	2		1			1			1	
Attempt to Commit Burglary	1			1							
Attempt to Mfg. Whiskey	2	1		1						1	
Bastardy	2			1	1						
Burglary	7	4		3			4				
Carnal Knowledge	5			5							
Carrying Concealed Weapon	1	1						1			
Conspiracy	1	1									
Distilling	53	48		5			37	11			
Driving While Intoxicated	3	1		2						1	
Embezzlement	1	1					1				
Failing to Burn or Bury Carcass	1		1								
Forgery	1	1						1			
Forfeiture	2	2								2	

CIRCUIT COURT OF ST. CLAIR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Grand Larceny and Rec. St. Prop.	19	10	3	6			7		2	1	
Hunting out of Season	1			1							
Incest	1	1					1				
Issuing Bad Check	1		1								
Leaving Scene of Accident	1			1							
Malicious Injury to Animal	1			1							
Manslaughter	6	4		2			4				
Murder	7	3	3		1		3				
Non-Support	1	1								1	
Operating Gambling Device	7	4		3						4	
Operating Car on Public Highway without Lighted Lamp	1			1							
Operating Rolling Store without License	1			1							
Petit Larceny	4		2	2							
Public Drunkenness	10	3		6	1			1		2	
Rape	1	1					1				
Resisting an Officer	3	1		2						1	
Robbery	3	2		1				2			
Trespass	4	1		3						1	
Trespassing & Cutting & Removing Timber	1			1							
Using Nets to Catch Fish	1	1								1	
Using Nets to Catch Fish Within One Mile of Dam	1	1								1	

Vagrancy	1	1						1			
Violating Ala. Carrier Law	1		1								
Violating Prohibition Law	24	3	4	17			1			2	
TOTALS	221	109	16	82	14		62	18	2	27	

CIRCUIT COURT OF SHELBY COUNTY

Abusive Language	9	6	1	2				2		4	
Arson	2	2					2				
Assault	3	3						1		2	
Assault and Battery	7	5		2				2		2	
Assault with Intent to Murder	12	6	1	5			6				
Assault with Intent to Rape	2			2							
Assault with Weapon	7	7						7			
Attempt to Distill	53	53								53	
Bastardy	8	2	1	5				2			
Burglary	18	13		4	1		13				
Buying, Receiving, Concealing Stolen Property	2	2					2				
Carrying Concealed Weapon	2		1		1						
Carnal Knowledge	3	1	1	1			1				
Disposing of Mortgaged Property	1	1						1			
Distilling	164	152	5	5	2		152				
Disturbing Peace	7	5	2				2	3			1
Driving While Intoxicated	13	8	1	3	1			5		3	
Embezzlement	4		1	3							
Escape—Jail	3	2		1				2			
False Pretense	8	2		6			1			1	

CIRCUIT COURT OF SHELBY COUNY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Gaming	3	3								3	
Grand Larceny	26	19	1	6			19				
Incest	1	1					1				
Leaving Scene of Accident	3	2		1				1		1	
Manslaughter	5	3	2				1	2			
Murder, 2nd Degree	12	9	2	1			9				
Non-Support	1			1							
Petit Larceny	12	6	3	3				4		2	
Public Drunkenness	1	1								1	
Rape	3	2		1			2				
Reckless Driving	6	4		2						4	
Robbery	7	3	2	2			3				
Vagrancy	4	4					2	1		1	
Violating Prohibition Law	53	34	7	10	2		4	18		12	
Violating Game Law	8	3	2	3						3	
Violating Highway Law	6	3		1	2			2		1	
Violating Narcotic Law	1			1							
Violating Health Law	1	1								1	

Violating Sunday Law	1	1								1	
TOTALS	482	369	33	71	9		218	54	1	96	1

CIRCUIT COURT OF SUMTER COUNTY

Abusive Language	4	4						2		2	
Aiding Escape	1			1							
Assault and Battery	9	7		1	1			1		6	
Assault and Battery with Weapon	12	7		5				4		3	
Assault to Murder	20	15	2	3			15				
Attempt to Bribe Officer	1	1					1				
Attempt to Distill	15	15								15	
Attempt to Manufacture Liquor	7	7					5			2	
Bastardy	1			1							
Bigamy	1			1							
Burglary	31	29	1	1			29				
Carnal Knowledge	2	1	1				1				
Carrying Concealed Weapon	6	1	1	4						1	
Crime against Nature	1	1						1			
Decoying away Child	1			1							
Disposing of Mortgaged Property	3	1		2				1			
Distilling	8	5		3			4			1	
Disturbing Religious Worship	4	2		2						2	
Driving While Intoxicated	2	1	1							1	
Embezzlement	1	1					1				
Forgery	1			1							
Grand Larceny	59	32	2	25			32				

CIRCUIT COURT OF SUMTER COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Issuing Bad Check	2			1	1						
Manslaughter	4	4					3			1	
Manufacturing Liquors	10	9		1			9				
Murder	13	8	2	3			8				
Non-Support	1		1								
Perjury	2		1	1							
Petit Larceny	8	6		2				2		4	
Practicing Medicine without Certificate	2	2						2			
Presenting Firearms	3	2		1						2	
Public Drunkenness	5	2		3				1		1	
Receiving Stolen Property	3	2	1				1			1	
Reckless Driving	5	3	2							3	
Robbery	4	2		2			2				
Threatened Use of Deadly Weapon	2	2								2	
Trespass After Warning	2	1	1				1				
Violating Game Law	13		3	10							
Violating Motor Carrier Act	2			2							
Violating Agricultural Law	1	1								1	

Violating Prohibition Law	24	18	1	3	2			5		13	
TOTALS	296	192	20	80	4		112	19		61	

CIRCUIT COURT OF TALLADEGA COUNTY

Abortion	1	1					1				
Abusive Language	3	3								3	
Adultery	2	2								2	
Aiding Escape	1	1					1				
Arson	3	3					3				
Assault and Battery	23	20		3				1		19	
Assault to Murder	25	18	4	3			17	1			
Assault to Ravish	1	1					1				
Assault to Rob	2	2					2				
Assault with Weapon	16	14		2			1	1		12	
Bastardy	4			4							
Bigamy	1	1					1				
Burglary	82	75	3	4			75				
Burning of Woods	1			1							
Buying, Concealing, Receiving Stolen Property	2	1		1			1				
Carnal Knowledge	5	4		1			4				
Carrying Concealed Weapon	1	1								1	
Conspiracy	35			35							
Decoying Child	1			1							
Distilling	22	15	5	1	1		15				
Driving While Intoxicated	5	3	1	1				2		1	
Embezzlement	1	1					1				

CIRCUIT COURT OF TALLADEGA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
False Pretense	1	1								1	
Forgery	2	1		1			1				
Grand Larceny	48	31	4	9	4		31				
Leaving Scene of Accident	1	1						1			
Malicious Destruction of Property	4	2		2						2	
Malicious Injury to Animal	1		1								
Manslaughter	3	3					3				
Murder	30	15	7	8		1	14				
Perjury	4			4							
Petit Larceny	3	2		1						2	
Public Drunkenness	4		1	3							
Rape	2	1			1		1				
Reckless Driving	1	1						1			
Robbery	1	1					1				
Vagrancy	6			6							
Violating Game Law	11	2	4	5						2	
V. P. L.	39	11	4	23	1			2		9	
Violating Revenue Law	4		1	3							

Unlawful use of Automobile	4	2	2					1		1	
TOTALS	406	240	37	122	7	1	174	10		53	

CIRCUIT COURT OF TALLAPOOSA COUNTY

Abusive Language	4	1		2	1					1	
Adultery	2			1	1						
Arson	4	3		1			3				
Assault	1	1								1	
Assault and Battery	6	4	1		1					4	
Assault with Intent to Murder	15	12	1	1	1		12				
Assault with Intent to Rape	2	1	1				1				
Assault with Weapon	10	7	1	2			3	3		1	
Bastardy	4	1	1	2						1	
Burglary	12	8		4			8				
Carnal Knowledge	2	2					2				
Disposing of Mortgaged Property	1			1							
Distilling	49	49					49				
Driving While Intoxicated	3	2		1						2	
Embezzlement	2			2							
False Pretense	1				1						
Grand Larceny	17	9	1	7			9				
Manslaughter	1	1					1				
Murder, 1st Degree	3	2	1				2				
Murder, 2nd Degree	4	3			1		3				
Petit Larceny	2	2						2			
Public Drunkenness	5	4	1							4	

CIRCUIT COURT OF TALLAPOOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Robbery	12	8		2	2		8				
Seduction	2	2					2				
Violating Prohibition Law	34	15	1	18				3	4	8	
Violating Highway Law	1			1							
TOTALS	199	137	9	45	8		103	8	4	22	

CIRCUIT COURT OF TUSCALOOSA COUNTY

(See Sixth Judicial Circuit)

CIRCUIT COURT OF WALKER COUNTY

Abusive Language	30	22	2	6				2	5	15	
Adultery	12	6	1	5				3	1	2	

Aiding Prisoner to Escape	3	1	2						1		
Arson	2	1		1			1				
Assault and Battery	99	73	6	19	1			21	8	44	
Assault to Murder	23	8	2	13			8				
Assault to Rape	2	1		1				1			
Assault with Weapon	1	1								1	
Attempt to Burglarize	4	2		2				2			
Attempt to Commit Perjury	1	1							1		
Attempt to Distill	12	12								12	
Attempt to Forge	2	2						2			
Bastardy	16	4	3	6	3					4	
Bigamy	4	3		1			3				
Boycotting	1			1							
Burglary	40	32	1	7			32				
Burning Woods	1		1								
Buying, receiving, concealing stolen property	8	6		2			4		2		
Carnal Knowledge	6	2	1	3			2				
Carrying Concealed Weapon	3	1	1	1						1	
Contempt of Court	1	1								1	
Contributing to delinquency of child	1	1						1			
Crime against Nature	1			1							
Distilling	49	38	2	8	1		30	8			
Disturbing Public Worship	2	1	1							1	
Driving While Intoxicated	27	17	5	5				5	2	10	
Embezzlement	4	3	1				2	1			
Failure to report buying scrap	1		1								
False Pretense	2	1		1			1				
Forgery	16	14		2			10	3		1	
Fraudulent Check	2			2							
Gambling	5	2		3						2	
Grand Larceny	58	38	3	16	1		38				
Incest	5	4	1				4				

CIRCUIT COURT OF TALLAPOOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Leaving Scene of Accident	15	8		7				2		6	
Manslaughter	21	21					13	3	3	2	
Murder	12	7	3	1	1		7				
Nonsupport	12	4	3	4	1			2		2	
Peace Proceeding	1		1								
Permitting Minor to Play Pool	3			3							
Petit Larceny	46	32	2	11	1			9	9	14	
Public Drunkenness	41	32		8	1			5	4	23	
Rape	2	2					2				
Reckless Driving	27	17	1	9				1		19	
Resisting an Officer	1	1						1			
Robbery	1	1					1				
Seduction	3			3							
Selling Mortgaged Property	3			3							
Setting off Dynamite	2	2					2				
Threatening to Use Knife	1			1							
Transporting Liquor	2	1		1			1				
Trespass	9	4	3	2			1	1		3	
Unlawfully presenting gun	3	2			1			2			
Using Car without Consent of Owner	2	2								2	

Vagrancy	35	17	2	16				6	6	5	
Violating Dog Law	1			1							
Violating Election Law	12	4	3	5						4	
Violating Game and Fish Law	3		1	2							
Violating Highway Law	3	2		1						2	
Violating Motor Vehicle Law	4	1	2	1						1	
Violating P. L.	237	137	13	81	6			41	5	138	
Violating Revenue Law	2		1	1							
Violating Stock Law	1			1							
Violating Sunday Law	1			1							
TOTALS	949	595	69	268	17		162	124	47	315	

CIRCUIT COURT OF WASHINGTON COUNTY

Abusive Language	6	5		1						5	
Aiding Prisoner to Escape	1	1					1				
Allowing Hogs to Run at Large	3	1	2							1	
Assault and Battery	7	6		1						6	
Assault to Murder	17	8	2	5	2		8				
Assault to Rape	1			1							
Assault with Intent to Ravish	1			1							
Assault with Weapon	16	15		1				5		10	
Attempt to Distill	3	2		1						2	
Bastardy	3			1	2						
Burning Woods	4	3		1				2		1	
Burglary	8	4		2	2		4				
Buying, receiving, concealing stolen property	2	1		1			1				

CIRCUIT COURT OF WASHINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Carnal Knowledge	1	1					1				
Carrying Concealed Weapon	1	1								1	
Crime against Nature	1	1					1				
Distilling	4	3		1			2	1			
Driving while Intoxicated	1	1								1	
Embezzlement	1			1							
False Pretense	5			5							
Forgery	1	1					1				
Fraudulent Check	1	1								1	
Grand Larceny	23	11	5	7			11				
Leaving Scene of Accident	1	1								1	
Maintaining unlawful Drinking Place	1			1							
Malicious Injury to Property	1			1							
Manslaughter	6	5		1			5				
Murder	10	6	2	2			6				
Operating dance hall without license	2	1		1						1	
Operating pool table without license	1	1								1	
Operating slot machine without license	8	5		3						5	
Petit Larceny	7	4		2	1			4			
Presenting Firearms	1	1						1			

Public Drunkenness	1	1						1			
Rape	1	1					1				
Selling Mortgaged Property	1			1							
Shooting Dog	1	1						1			
Temporary Use of Personal Property	3	3								3	
Transporting Liquor	3	3					3				
Trespass	2			1	1						
Violating Election Law	2			2							
Violating Game and Fish Law	5	1	1	3						1	
Violating Motor Vehicle Law	1			1							
Violating P. L.	7	4		3						4	
Violating Rabies Law	1			1							
TOTALS	177	104	12	53	8		45	15		44	

CIRCUIT COURT OF WILCOX COUNTY

Arson	1			1							
Assault and Battery	4	3		1					3		
Assault to Murder	11	6	2	2	1		6				
Assault to Rape	1	1					1				
Assault with a Weapon	8	8						7		1	
Attempt to Commit a Felony	1	1						1			
Bigamy	1	1					1				
Burglary	28	23	3	2			23				
Buying, Receiving, Concealing Stolen Property	4	3		1			2			1	
Carnal Knowledge	1				1						
Carrying Concealed Weapon	1	1							1		

CIRCUIT COURT OF WILCOX COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Distilling	120	119		1			119				
Driving while Intoxicated	1	1						1			
Embezzlement	1			1							
Forgery	5	5					5				
Grand Larceny	32	28		4			28				
Issuing Worthless Check	3	3						3			
Kidnapping	1	1					1				
Malicious Injury to Animal	1	1						1			
Malicious Mischief	1	1							1		
Manslaughter	12	12					9	3			
Murder	9	6		2	1		6				
Obtaining Money by False Pretense	3	3					2			1	
Petit Larceny	4	4							3	1	
Rape	1	1					1				
Robbery	2	2					2				
Violating Highway Law	2	2					1	1			
Violating Prohibition Law	3	3					2			1	
TOTALS	262	239	5	15	3		209	17	8	5	

CIRCUIT COURT OF WINSTON COUNTY

Abusive Language	7	1	1	5						1	
Adultery	3	2		1						2	
Arson	1		1								
Assault and Battery	12	5	2	5				1	1	1	2
Assault to Murder	10	4	1	3	2		4				
Assault with Weapon	3			3							
Attempt to Burglarize	1			1							
Attempt to Commit Grand Larceny	2	1		1					1		
Attempt to Distill	25	25						1		24	1
Burglary	3	2			1		2				
Buying, receiving, concealing stolen property	1		1								
Carnal Knowledge	1		1								
Carrying Concealed Weapon	1			1							
Distilling	65	53	1	6	5		44	1			8
Driving while Intoxicated	2	1		1							1
Embezzlement	1			1							
False Pretense	1	1					1				
Forgery	5	3		2			1		1		1
Grand Larceny	16	8	2	5	1		7				1
Incest	1			1							
Leaving Scene of Accident	1			1							
Manslaughter	3	3					3				
Murder	5	4	1				4				
Nonsupport	1			1							
Petit Larceny	9	6		2	1				2	2	3
Presenting Firearms	1	1									1
Public Drunkenness	15	9	1	5				1		5	3
Reckless Driving	3	2		1						2	
Seduction	1	1									1

CIRCUIT COURT OF WINSTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequities	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	Probation
						Death	Penitentiary	Hard Labor	Jail		
Selling Mortgaged Property	1	1						1			
Transporting Liquor	5	3		1	1		1				2
Vagrancy	1			1							
Violating Anti-Rabies Law	1		1								
Violating Game and Fish Law	1		1								
Violating P. L.	30	20	4	6				5		16	2
Violating Revenue Law	1			1							
TOTALS	240	156	18	55	11		67	10	5	52	26

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